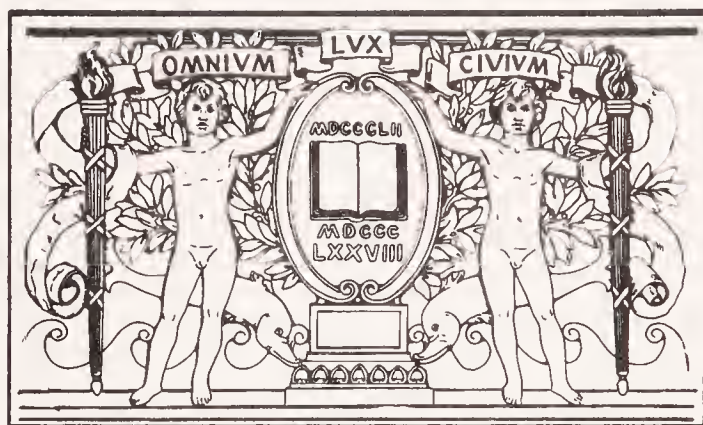




PRESIDENT'S COMMISSION  
FOR A NATIONAL AGENDA FOR THE EIGHTIES

REPORT OF THE PANEL ON  
THE ELECTORAL AND DEMOCRATIC PROCESS

THE ELECTORAL AND  
**Democratic**  
**Process**  
IN THE  
**Eighties**



# BOSTON PUBLIC LIBRARY







PRESIDENT'S COMMISSION  
FOR A NATIONAL AGENDA FOR THE EIGHTIES

---

REPORT OF THE PANEL ON  
THE ELECTORAL AND DEMOCRATIC PROCESS

RECEIVED

JAN 26 1981

President's Commission  
on Pension Policy

THE ELECTORAL AND  
**Democratic**  
**Process**  
IN THE  
**Eighties**

---

Washington : 1980

---

This document was prepared by the Panel on the Electoral and Democratic Process, one of nine Panels of the President's Commission for a National Agenda for the Eighties. The report represents the views of a majority of members of the Panel on each point considered. Not every member of the Panel agrees with or supports every view or recommendation in the report. This report was prepared by members of the Panel without involvement by members of the Commission who were not members of the Panel. This project was supported by the National Science Foundation, under provisions of Executive Order No. 12168, October 24, 1979. Points of view or opinions expressed in this volume are those of the Panel on the Electoral and Democratic Process, and do not necessarily represent the official position of the National Science Foundation.

**Library of Congress Cataloging in Publication Data**

United States. President's Commission for a National Agenda for the Eighties. Panel on the Electoral and Democratic Process.  
The electoral and democratic process in the eighties.

1. United States—Politics and government.	I. Title.
JK271.U56 1981 320.973 81-86	

---

---

# Foreword

As America enters the eighties, our nation faces a world greatly changed from that of even a decade ago. Vast forces are in action at home and abroad that promise to change the lives of all Americans. Some of these forces—such as revolutionary developments in science and technology—hold out hope for longer life, labor-saving mechanisms, exploration of the universe, and other benefits for all peoples. Other forces—such as the growing demand for strategic raw materials under the control of supplier cartels—raise serious problems for all nations. At home, we face serious and unresolved issues in the social and economic structure of American society.

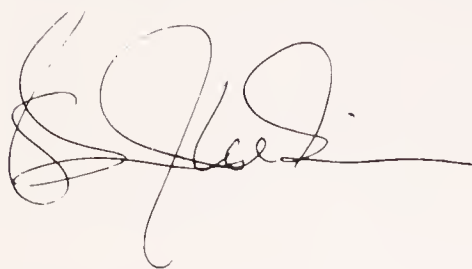
On October 24, 1979, President Jimmy Carter established the President's Commission for a National Agenda for the Eighties. His purpose was to provide the President-elect and the new Congress with the views of 45 Americans drawn from diverse backgrounds outside of government. The group is bipartisan, representing business and labor, science and the humanities, arts and communication. Members of the Commission are experts in many fields, but possess no special expertise in predicting the future. Rather, we have done our best to uncover the dynamics of American society and world affairs that we believe will determine events in the eighties. This report of the Commission, *A National Agenda for the Eighties*, sets forth our views.

The analytical work of the Commission was accomplished by 9 Panels, each consisting of 5 to 11 Commissioners with appropriate staff. The Panels probed into major subject areas designated by the President in the Executive Order that created the Commission, as well as other areas that the Commission itself determined should be on the agenda. This approach gave Panel members an opportunity to gain considerable familiarity with complex subject matters, and provided the full Commission with a wide range of information not otherwise attainable in the 13 months available for this study.

---

---

The Panels are responsible for their own reports, and the views contained in any Panel report do not necessarily reflect the views of any branch of government or of the Commission as a whole.

A handwritten signature in dark ink, appearing to read 'W. McGill', with a long horizontal stroke extending to the right.

William J. McGill  
Chairman

La Jolla, California  
December 31, 1980



---

# Preface

The members of the Panel on the Electoral and Democratic Process of the President's Commission for a National Agenda for the Eighties have met frequently throughout the course of 1980. From the first meeting, it was evident that although Panel members differed on some issues, we shared common concerns on a number of important matters. We are impressed, as indeed all Americans are, with the need to address the substantive problems raised by other Panels of this Commission—problems of the economy, energy, the environment, national security, and the need to protect the rights of the individual in a complex society. Unlike the other Panels, however, we have focused on the ability of our political and governmental institutions to make effective and timely policies to meet these problems.

The establishment of priorities for the United States in the 1980s will be difficult for several reasons. First, our institutions seem increasingly incapable of making the hard choices or tradeoffs between different policy alternatives. Second, our people are (with some reason) cynical about the capacity and good judgment of the government and may resist the attempts of leaders to pursue some goals at the expense of others. Finally, the federal government is involved in more aspects of people's lives than ever before, creating more opportunities for the public to be disappointed by the government's performance.

In light of these concerns, the Panel focuses on several strategies for improving national policymaking: strengthening the parties, reforming federal elections, improving the organization and procedures in Congress and in the executive branch, and relieving the heavy workload of the federal courts. Putting into effect any proposals to restore substantial economic growth, or securing the passage of policies for energy conservation and development, welfare, or health, will require stable, coherent, decisive political leadership in the executive and legislative branches of government. The President and Vice President are our only leaders elected nationwide. Accordingly, the President is still the person to whom all groups turn when their

---

---

demands are not satisfied elsewhere. But coherent and consistent leadership in our democracy is possible only through the creation of working political majorities sufficient to support the enactment and implementation of effective policies.

The Panel has addressed itself to the widespread belief that in recent years our society has become increasingly fragmented and government increasingly bogged down. We are well aware that correcting this situation is a work of great subtlety. The line between paralysis of action and tyranny of the majority is much finer than one might think. Great care has to be taken to ensure that in bringing about working majorities, the rights of minorities are fully protected and that Congress, the President, and the political parties are all held accountable for their actions.

Although the members of the Panel were in substantial agreement, one should keep in mind that *no* Panel member agrees with every statement and recommendation contained in this report. In line with our theme of coalition building, we have tried to build agreements among the Panel members, but inevitably, in a group of eight there are varying levels of agreement with the conclusions of the majority. There are places in the text where a Commissioner's strong disagreement with the conclusions of the majority is noted. And there were, of course, other areas where the Panel members were not unanimously in favor of the conclusions. Further, the report does not necessarily reflect the beliefs of any other members of the President's Commission not represented on this Panel. Nevertheless, I am confident that this report indicates the common ground we reached in the meetings of the Panel on the Electoral and Democratic Process.

I would like to record my thanks to the other seven members of the Panel for the stimulating intelligence, good nature, and conscientiousness that they have shown in the course of our mutual endeavor. The other Panel members were: John W. Gardner, Founding Chairman of Common Cause; Ruth J. Hinerfeld, President of the League of Women Voters; Thomas C. Jorling, Professor of Environmental Science at Williams College; Rhoda H. Karpatkin, Executive Director of Consumers Union; Theodore R. Marmor, Professor of Political Science and of Public Health, Yale University; Frank Pace, Jr., President and Chief Executive Officer of the International Executive Service Corps; and Howard J. Samuels, former Under Secretary of Commerce. It was a pleasure for me to serve as chairperson of such an extraordinary group of persons.

In addition, I wish to thank a number of persons who gave the Panel the benefit of their advice. Unfortunately, there is not sufficient room here to thank everyone, but I

---

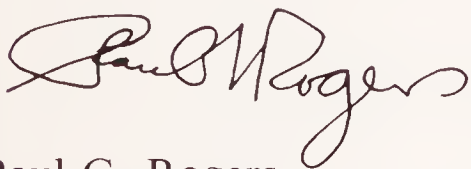


---

would like to extend a special thanks to the members of Congress who served on the Congressional Advisory Committees to our Commission and met with us individually and assisted us with their instructive commentary on politics and government in America. Included in that group were Sen. David F. Durenberger, Congresswoman Geraldine A. Ferraro, and Congressmen Richard Bolling, Dick B. Cheney, Barber B. Conable, Jr., Don Fuqua, Frank Horton, Daniel A. Mica, William R. Ratchford, and Bruce F. Vento.

Additionally, I would like to extend special thanks to: Douglass Cater, Senior Fellow of the Aspen Institute for Humanistic Studies; Alan Dean of the National Academy of Public Administration; the Honorable Donald Fraser, Mayor of Minneapolis; Dr. Herbert Kaufman of The Brookings Institution; Dr. Austin Ranney of the American Enterprise Institute; and Dr. W. Harrison Wellford of the Office of Management and the Budget. Claude E. Barfield and Richard A. Wegman, Staff Directors of the Commission, and David Waller, of the law firm of Hogan & Hartson, made many useful suggestions that improved the report. Our consultants, C. J. Abrams of the University of California at Berkeley and Frank J. Thompson of the University of Georgia, provided much helpful advice, as did Judith Ross Ferguson, the report's editor.


Finally, my most sincere thanks and appreciation, as well as that of each member of the Panel, go to Commission staff members Caroline M. LeGette and Andrew S. McFarland. Together, these two political scientists thoroughly researched and skillfully and patiently drafted this Panel's position papers, as well as this report. Their tireless efforts made this report possible.



Paul G. Rogers  
Panel Chairperson

Washington, D.C.  
December 31, 1980

---



Digitized by the Internet Archive  
in 2017 with funding from  
Kahle/Austin Foundation

---

# THE ELECTORAL AND **Democratic Process**

## **Chairperson**

Paul G. Rogers  
*Former Member,  
U.S. House of Representatives*

John W. Gardner  
*Founding Chairman,  
Common Cause*

Ruth J. Hinerfeld  
*President, League of  
Women Voters*

Thomas C. Jorling  
*Professor of  
Environmental Science,  
Williams College*

Rhoda H. Karpatkin  
*Executive Director,  
Consumers Union*

Theodore R. Marmor  
*Professor of Political  
Science and of Public  
Health, Yale University*

Frank Pace, Jr.  
*Chief Executive Officer,  
International Executive  
Service Corps*

Howard J. Samuels  
*Former Under Secretary  
of Commerce, U.S.  
Department of Commerce*

---

## **Senior Professional Staff**

Caroline M. LeGette  
Andrew S. McFarland

---





---

# TABLE OF Contents

---

<b>Chapter 1 Introduction: The Need for Coalition Building</b>	<b>1</b>
Declining Confidence in American Political Institutions	1
The Problem of Fragmentation	3
The Presidency and the Executive Branch	5
The Congress	6
The Federal Courts	8
Political Parties	8
Interest Groups	9
Political Reform Through Coalition Building	11
Focus of the Report	13
<b>Chapter 2 Political Parties and Elections</b>	<b>19</b>
The Decline of Political Parties in America	20
Party Decline and Coalition Building	23
Strengthening the Political Parties	26
Lengthened Congressional Terms	35
<b>Chapter 3 The Congress</b>	<b>39</b>
Barriers to Timely Decisionmaking in Congress	39
Strengths of Congress	42
The Need for Coalition Building in Congress	42
The Problems of Congressional Committee Organization	43
Strengthening the Role of the Parties	51
Congressional Oversight of the Executive Branch	57

---

---

<b>Chapter 4 The Presidency and the Executive Branch</b>	<b>63</b>
Presidential Leadership and Management of the Executive Branch	<b>66</b>
Other Management Staff Functions	<b>71</b>
Cooperation with Congress	<b>73</b>
Federal Government Personnel	<b>74</b>
Reorganization of the Executive Branch Structure	<b>81</b>

---

<b>Chapter 5 The Federal Courts</b>	<b>87</b>
The Overloaded Federal Courts	<b>88</b>
Measures to Reduce the Overload	<b>90</b>
Alternative Modes of Dispute Resolution	<b>93</b>

---

<b>Biographies</b>	<b>99</b>
--------------------	-----------

---



---

## Chapter 1

# INTRODUCTION: THE NEED FOR **Coalition Building**

**A**s the decade of the eighties begins, difficult problems of economic instability, energy supply uncertainty, international economic competition, and continuing high unemployment are confronting our nation. American political institutions—the Presidency and the executive branch, the Congress, the courts, and the political parties—are not the primary source of these difficulties. A complex combination of social, economic, cultural, and international factors have brought about these problems. However, some of our political and governmental arrangements do seem to exacerbate current troubling situations. Although improving our political institutions is not a sufficient solution for these problems, reforms would facilitate and enhance the development of new policies to meet the challenges of the coming decade. With this focus, the Panel on the Electoral and Democratic Process of the President's Commission for a National Agenda for the Eighties offers its report and recommended reform measures.

Although continuous inflation, increased unemployment, and rising energy costs have created significant problems for the American public, another major problem is a sense of foreboding about the future. By 1985, will inflation continue to plague us? Will gasoline sell for \$3 per gallon? Indeed, will gasoline and other fuels be rationed? Will millions of Americans be thrown out of work because of competition from imported products? Will our standard of living increase only slowly or even decrease for the average American? Does the nation face a decade of tense struggle among various interest groups maneuvering to maintain their slice of the economic pie?

Concerned about such questions and insecurities, many Americans—both citizens and political leaders—have become anxious about the ability of our political institutions to formulate appropriate policies in a timely and coherent manner. For many, a sense of frustration and a lack of confidence deepen as the Presidency, the

**Declining  
Confidence in  
American  
Political  
Institutions**

executive branch, the Congress, and the political parties have been ineffective in finding solutions for our major problems. This widespread public perception that our institutions are not performing well is reflected in an increase in cynicism and a decline in participation in political activity. Since the mid-1960s the American public also has been losing confidence in the abilities of those persons in charge of our national institutions (see Table 1). For example, in 1966, 42 percent of a research sample expressed a great deal of confidence in the leadership of Congress, but by 1979, this figure dropped to 18 percent. With regard to the executive branch leadership, similar declines in confidence have occurred—from 41 percent in 1966 to 17 percent in 1979.

**Table 1**  
**Percent of Poll Expressing a Great Deal of Confidence in Nine American Institutions, 1966-79**

Question: As far as people in charge of running [each institution on the list below] are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?

	1966	1971	1973	1974	1975	1976	1977	1978	1979
Average of Nine Major Institutions	43%	27%	33%	28%	24%	20%	24%	25%	23%
TV News	25	—	41	31	35	28	28	35	37
Medical Establishment	73	61	57	50	43	42	43	42	30
Military	62	27	40	33	24	23	27	29	29
Press	29	18	30	25	26	20	18	23	28
Organized Religion	41	27	36	32	32	24	29	34	20
Major Companies	55	27	29	21	19	16	20	22	18
Congress	42	19	29	18	13	9	17	10	18
Executive Branch	41	23	19	28	13	11	23	14	17
Organized Labor	22	14	20	18	14	10	14	15	10

Source: Compiled from surveys by Louis Harris and Associates, reported in *Public Opinion* (October/November 1979):30.

In addition to public opinion survey results, other data indicate that the proportion of potential voters who actually participate in Presidential and Congressional elections has declined steadily since the 1960s (see Table 2). In 1960,

63.1 percent voted for a Presidential candidate, while 58.7 percent voted for a member of Congress. By 1976 this rate had dropped to 54.4 percent and 49.6 percent, respectively. In comparison with other countries, American voter participation is low (see Figure 1), providing further evidence of a disturbing deficiency in popular support for American political institutions. In addition, there is an increasing tendency for Americans to view other industrial democracies, such as Japan and West Germany, as not only approaching decisionmaking differently, but also achieving different—and sometimes better—results, at least with regard to their economic problems and programs.

Year	Presidential Elections	Congressional Elections	Table 2 Percent of Voting Population Participating in Elections for President and Members of Congress, 1960-78
1960	63.1%	58.7%	
1962		46.3	
1964	61.8	57.8	
1966		45.4	
1968	60.7	55.2	
1970		43.8	
1972	55.4	50.9	
1974		36.1	
1976	54.4	49.6	
1978		35.1	

Source: U.S. Bureau of the Census, *Social Indicators* (Washington, D.C.: U.S. Government Printing Office, forthcoming).

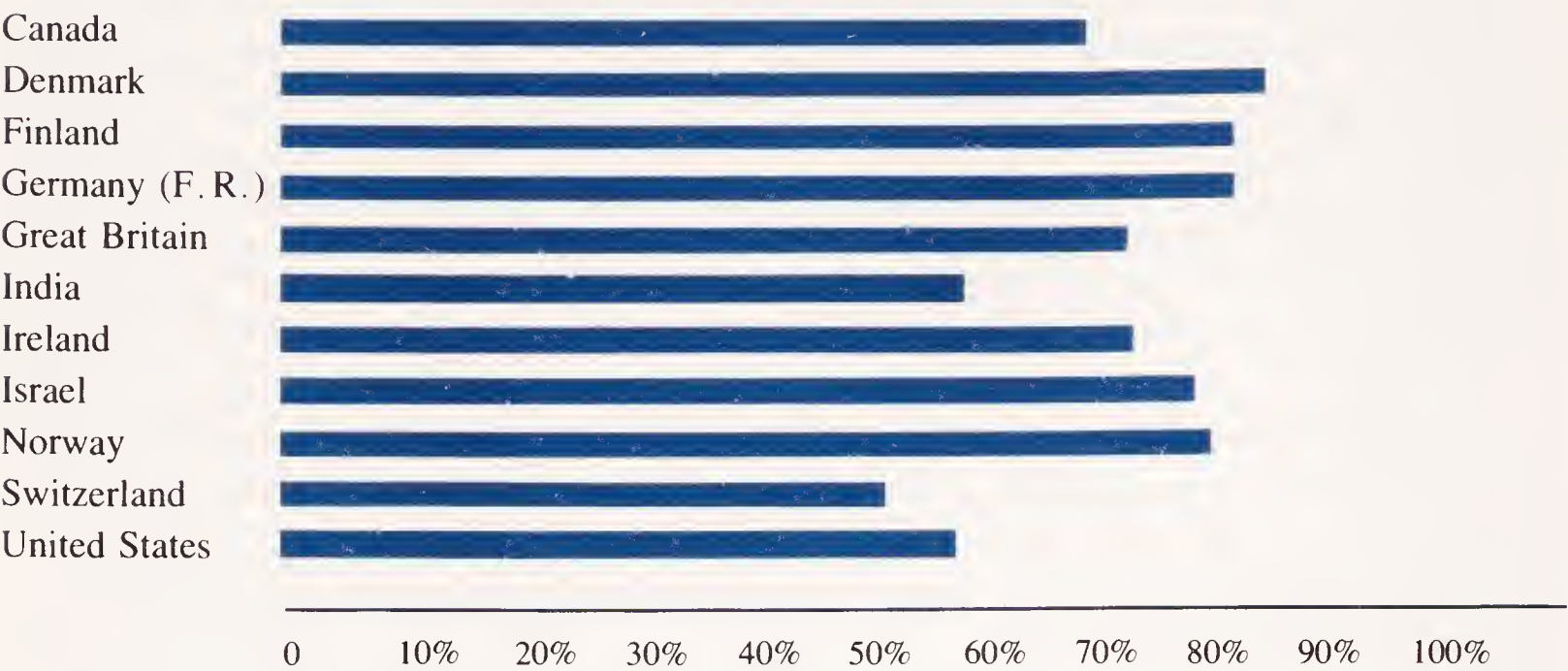
This growing public alienation surely reflects an outlook among citizens that our political institutions have not responded adequately to the welter of troublesome problems confronting our nation. Timely action has sometimes been prevented because of the fragmentation that afflicts our American political institutions today. This fragmentation can be defined as the tendency for such organizations to break down into semi-autonomous units that act to further the interests of particular groups in society.

As a result of this condition, the various political institutions and their leaders are experiencing a reduced capacity to resolve the throng of conflicting demands from various interest groups, constituents, and lobbies into policies that can be supported by a majority. One of the strengths of our system is that many groups receive a hearing. But after that hearing, it has proven difficult to establish timely and consistent government action.

**The Problem of Fragmentation**



**Figure 1**  
**Voting Participation in Selected Democracies,**  
**1960 -78\***



\*Average voter turnout measured as a percentage of eligible age groups.

Source: G. Bingham Powell, Jr., "Voting Turnout in Thirty Democracies: Partisan, Legal and Socio-Economic Influences," in Richard Rose, editor, *Electoral Participation: A Comparative Analysis*, (Beverly Hills: Sage Publications, 1980) p. 6.

---

Examples are numerous. The leaders of the executive branch and of the Congress, vulnerable to a variety of pressures, seem unable to balance and meld the conflicting desires of numerous groups into a unified policy that represents the best interests of the general public. On another level, the federal court system is now overburdened by a continuing increase in the number of civil lawsuits. Even the political parties, which were formed to establish majorities out of the mixture of separate and often opposing interests expressed by organized groups, have declined significantly over the years and are no longer capable of fulfilling their earlier coalition-building role.

On the other hand, interest groups have become more effective in influencing policy made by the institutions of American national government. The number of groups organized to lobby the federal government has steadily increased over the past two decades. Virtually every business, trade, and profession is organized for political action, while state and local governments and other institutions such as religious denominations, universities, and hospitals all have their own lobbies. In addition, the number of Washington spokesmen for ethnic groups and racial minorities, as well as for public interest groups and other “cause groups,” has greatly increased.

Although it is tempting to identify the reason for the fragmentation of our political institutions as the increased number and effectiveness of interest groups and their lobbies, such an approach is far too simplistic. In part, the continuing organization of interest groups is a response to dissatisfaction with the policies of government. Both the problem of fragmentation and its causes are complex. Indeed, the causes cannot be pinpointed easily. However, some recent changes in and influences on American political institutions have promoted fragmentation, and these can be identified.

Although many persons might look to the government’s leader for more effective action on problems and policies, Presidents have been thwarted in the initiation and execution of policy by a number of factors. First, in order to implement policies and programs, the President needs top-quality men and women to serve in the administration—as cabinet Secretaries, subcabinet officers, assistants to cabinet Secretaries, and on the White House staff. The great majority of these positions are filled by Presidential appointees who are not part of the permanent civil service, and locating and recruiting executives who are competent, capable of taking a long-range point of view, and willing to remain in government for the President’s entire term have proven difficult. Hence, the provision of managerial

## **The Presidency and the Executive Branch**



---

assistance to operate federal departments and agencies has been impaired.

Another problem of fragmentation has been the competition and conflict between high-ranking members of the White House staff and cabinet officers, which has created a barrier to effective policymaking. In addition, the White House staff has grown significantly, constituting yet another bureaucracy competing for the President's attention.

The executive branch itself also needs to find and develop the best executive talent possible. The Civil Service Reform Act of 1978 has been helpful in this respect by establishing the Senior Executive Service, composed of top federal officials who may be moved from agency to agency to meet the varying needs of government. However, additional constructive programs for improving the performance of the civil service and its top executives are needed to respond to the recent wave of public criticism of federal bureaucrats, which may motivate some of the most capable officials to leave the government.

A more important problem with regard to fragmentation within the executive branch is that many agencies have become quasi-autonomous, having formed "iron triangles" (alliances with Congressional subcommittees and interest groups) that have sufficient power to resist Presidential directives. Federal agency and Congressional leaders often become advocates for special narrow interests at the expense of the general interests of the public at large. Finally, although one President after another has sought to reorganize the executive branch to improve its effectiveness, such changes have often been resisted by the interest groups, the federal agencies, and the members of Congress whose constituents and membership benefit from existing arrangements.

Cooperation between Congress and the President has also become more difficult because of the way that Presidential nominees are selected. Presidential primaries tend to favor candidates who do not concurrently hold demanding offices and who may not have strong ties to or experience with other national leaders or with the organization of the federal government. As a result, it has become more difficult for some Presidents to negotiate with Congressional leaders and to manage the executive branch effectively.

Because of the fragmentation of its structure, Congress often has great difficulty in establishing policy for important issues. Reasons for this situation include recent changes in the seniority system and in the power of committee chairpersons, and increases in the number of subcommittees, which have diffused power among many members of Congress, including recently elected members.

## The Congress



---

Although these changes are laudable, indeed essential, for some purposes, they have made action more difficult. The President can no longer make informal agreements with a few Congressional leaders and expect the passage of legislation corresponding to such agreements. Today, so many relatively junior members have significant influence—such as holding the chair position for an important subcommittee—that negotiating cooperation between Congress and the executive branch has become much more difficult. In addition, the elected party leaders—the Speaker of the House, the majority and minority party leaders in the Senate and the House, the party whips, and the party caucus chairpersons in both houses—could offer a unifying force for the fragmented Congressional system, but their power has been insufficient—or they have been unwilling to use it decisively—to prevent long legislative delays on important bills. Finally, the relationship between the President and Congress has not been cooperative during the 1970s, creating barriers to timely policy for directing the economy, dealing with the energy problem, and working for an effective national defense and foreign policy.

Another fragmenting factor is that during the 1970s, the number of subcommittees increased substantially, especially in the House of Representatives. More subcommittees now have significant authority over a given policy area than a decade ago. This diffusion of authority increases the amount of negotiation required to pass a bill, expanding possibilities of delaying that passage. The increase in subcommittees has also meant that top-level officials of the executive branch spend a great deal of time preparing and giving testimony to Congress, rather than implementing public policy. Further complicating this relationship between executive branch departments and Congress is the fact that several different subcommittees may have authority over a given agency and its programs.

Individual workloads of members of Congress have also increased dramatically, again posing problems of delay and fragmentation. Assignments to several subcommittees, conflicts in meeting times, and increases in constituent casework crowd members' schedules. In addition, interest group representatives and other lobbyists put demands on members. The result has been less time for members' thoughtful reflection and study of the issues and legislation before the Congress.

Yet another source of delay and fragmentation is procedures that prevent timely action on important issues. One such procedure in the House of Representatives is the process of the multiple referral of bills. Much important legislation is now reviewed jointly by several committees (in addition to the Rules Committee), all of which must approve the bill before it receives a floor vote by the full House membership.

One of the most vivid examples of fragmentation is illustrated by the judicial branch of the American federal system. During the 1970s, America became an increasingly litigious society, with thousands of new civil cases filed in federal courts. Because use of the courts sometimes reflects a breakdown in other conflict resolution strategies, such as negotiation, compromise, and brokering among competing interests, the dramatic surge in court cases surely reflects the continuing fragmentation of society.

Arising out of this increased litigiousness is a major problem facing the federal (as well as the state and local) courts—an ever growing workload. More civil cases are filed daily, more cases are pending 3 years or longer before coming to trial, and more trials are lasting 4 days or longer. Such factors constitute an overload, which threatens the quality of justice available from our courts.

In response, at least six measures to reduce the burdensome workload on the federal courts are available: establishing court administrators; providing federal magistrates to decide minor judicial disputes; increasing the number of federal judges; reducing the number of “diversity cases” (those involving litigants from differing states); experimenting with methods to simplify court procedures; and resolving disputes before they come to trial through alternative strategies of mediation and arbitration. Experimentation with all six measures should be continued during the 1980s to ease the burden on the courts.

As a medium of compromise, political parties function to form majorities out of the confusion of separate and often conflicting interests expressed by individuals and organized groups, thereby providing a stabilizing institution to help balance the forces of fragmentation. However, virtually all observers agree that the two major American political parties have become much weaker over the past 30 years.

Once the nation looked to political parties to establish some unification within our federal system of separation of powers by facilitating alliances within Congress, between Congress and the President, and among leaders of the national government and Governors, mayors, and state legislators. But today parties retain only a portion of their former power, experiencing reduced influence in the conduct of their major activity—elections. For example, members of Congress tend to form independent political coalitions to support their reelection campaigns, thereby staying in office through control of their personal organizations and avoiding the need to rely on assistance from party organizations.

Another result of weakened political parties—as well as of an increase in the number of Presidential primaries

## Political Parties



---

—is that candidates for party nomination build their own organizations for contesting primaries. Consequently, the role of the party leadership in the selection of nominees has declined—an important factor in the diminished influence of the national political parties.

Political parties have also been weakened and fragmented by the increased importance of television coverage of elections. For instance, media coverage of the Iowa caucuses and of the New Hampshire primary—early events in the competition for a party’s Presidential nomination—have given disproportionate influence to the participating voters in these states in selecting Presidential candidates.

With regard to the political parties’ major activity—the contesting of elections—the downward trend in public participation over the past decades indicates the need to renew potential voters’ interest in this traditional type of political activity. Although they will not solve the underlying causes of the decline in voting, reforms in the registration procedure (such as mail-in or same-day registration), as well as declaring election day a holiday, could help to increase voter turnout somewhat.

During the 1970s, the number of interest groups organized to lobby in Washington grew increasingly. Some 2,500 trade associations and professional groups—perhaps one-third of all national associations—have established headquarters in Washington, D.C., usually with the purpose of lobbying the federal government. In addition, advances in technology—computerized mailing lists and long-distance telephone systems—have made the lobbying powers of interest groups more effective at influencing decisionmakers in Washington. Well-timed and large volumes of grassroots communications have become a fragmenting force in the policy formulation process in Congress.

Two particular types of interest groups are becoming more influential—single-issue groups and political action committees (PACs). Single-issue groups are generally concerned with policy affecting one area, such as gun control, abortion laws, and passage of the Equal Rights Amendment. The influence of such groups lies in their ability to motivate their members to vote for political officeholders solely on the basis of a candidate’s stand on one issue. In addition, the uncompromising positions of single-issue groups often provoke divisive and time-consuming Congressional debates, making it more difficult to find acceptable compromises among groups and to attend to other legislative business.

The number and contributions of political action committees have rapidly increased during the 1970s. PACs are separate organizational units—formed by corporations,

## **Interest Groups**

---

trade associations, vocational associations, labor unions, and ideological groups—that donate funds to candidates for political office. Many observers believe that the steady growth in PAC contributions may further increase the influence of interest groups on Congressional policymaking during the eighties.

Because the number and the effectiveness of interest groups have increased, and because Congress, political parties, and the executive branch have become increasingly fragmented, interest groups have been able to gain access to the decisionmaking process in order to block or slow public action with which they disagree. The increasing number and authority of Congressional subcommittees, for instance, provide more opportunities for interest groups to locate an appropriate subcommittee friendly to its views and willing to obstruct action by other legislators.

Iron triangles represent another point of access to the decisionmaking process. These coalitions of leaders of interest groups, Congressional subcommittees, and executive branch agencies are important in American government because they often exercise effective veto power over the formulation of a particular public policy—by the refusal of key Congressional committees to ratify proposed legislation, by the control of important technical information by insiders, by the exercise of delaying power, and so forth. Such so-called “subgovernments” can be a major factor in political fragmentation.

Although interest groups may indeed play a role in the fragmentation of American political institutions, it should be remembered that one person’s “special interest group” is another person’s “representative in Washington.” In a political system with weakened political parties, organized interest groups have assumed a major function in representing people’s interests to government. Although the public good is sometimes ill served by policy that is influenced by the balance of power among lobbying organizations, interest groups are worthy of respect when they serve as agents “to petition the Government for a redress of grievances” (in the words of the First Amendment). What is needed is not less pressure on government, but more incentives for leaders of political institutions to channel pressures in a direction that serves the general public.

Another positive factor is that the increasing organization of interest groups provides a new vehicle for effective citizen participation in the political process. Now, more than ever before, individuals can join groups that employ lobbyists who are effective in bringing their demands to the attention of Congress and of the executive branch. However, most citizens are also quite aware that if groups that they support are better organized and more effective, so too are groups that represent the views of their opponents.



---

Not only political leaders, but also individual citizens realize that more and more demands are effectively channeled to government, which seems less and less able to act to meet these demands.

All groups are not necessarily represented adequately, however. Despite the ever increasing numbers of interest groups, the job of organizing citizens is not complete. Many significant positions on issues held by a great number of persons, such as the need for consumer protection, environmental integrity, and honest government, are often not adequately presented to the federal government. In addition, the concerns of women and of minority groups are sometimes weakly presented to government. Political organization in these areas remains a continuing need.

As illustrated, the trends in and influences on the executive branch, the Congress, the federal courts, the political parties, and the various interest groups have produced a fragmentation of the political process that makes effective governmental action to meet the major problems of the eighties more difficult. The political challenge of the decade therefore is to reform the American political institutions to enhance the formulation of effective and timely public policy.

In its deliberations on the problems facing American political institutions, particularly on the problem of fragmentation, the Panel on the Electoral and Democratic Process concluded that an important remedy to the incohesiveness of our national institutions is a renewed emphasis on coalition building. The term “coalition building” refers to the process of formulating policies in the interests of the general public by gaining support for such policies from the confusion of conflicting interest groups and implementing such policies with effectiveness. To enact a program to meet the needs posed by a major policy problem, political leaders have to build a supporting coalition. To be effective, such a coalition should include a great number of disparate interest groups and individuals.

Although an important aspect of the American democratic ideal is the freedom of citizens to organize to petition the government, the quality of democracy is seriously affected if the government cannot fashion a majority platform out of the numerous demands of many separately organized interests. The problem is best viewed as the lack of majority coalitions in *single* areas of public policy, such as the approach to the energy supply dilemma or to the control of inflation. Such majority coalitions would have different constituents in different fields of policy.

The Panel’s coalition-building approach has implications for reform in the selection of political leaders, in the

## **Political Reform Through Coalition Building**

---

organization of Congress and of other political institutions, in the implementation of decisions by the executive branch, and in the role of the major political parties:

- ☐ Building a majority to support a public policy position requires the negotiating capacities of skilled political leaders. To elicit support of a majority for a policy toward inflation, for example, a President must consult, persuade, and make agreements with many other leaders from Congress, the business community, organized labor, and so forth. Of course, negotiating skills are not the only prerequisites of effective leadership; such persons should have a broad vision of the directions toward which the nation should move.
- ☐ The formation of a majority can be greatly hindered by cumbersome procedures and organization in decisionmaking bodies such as Congress. For example, energy policy legislation often requires ratification by several different committees in the House of Representatives before it can be voted on by the entire group of legislators.
- ☐ Although policy may be formulated and legislated, it still must be effectively implemented by the executive branch to have a significant impact. The Panel's concept of coalition building implies effective management of the executive branch by the President, cabinet officers, and other top managers to implement policies supported by majorities and to prevent the veto of such policies by entrenched coalitions of special interests.
- ☐ The coalition-building concept is aimed at protecting the judicial branch of government from experiencing an overloaded condition. Experimentation with alternative methods of resolving disputes could reduce the workload of the courts.
- ☐ As major vehicles for the mediation of conflicting interests, the American political parties are integral parts of the coalition-building approach to decisionmaking. Therefore, strengthening the major political parties can have positive effects on the entire political process.

In calling for a coalition-building approach to institutional reform, the Panel is not advocating the attainment of complete agreement or a "national consensus" on policy measures. In a free society, consensus is very difficult to attain, and on a divisive point, consensus may not be desirable if it ignores minority interests. Additionally, in our own and in other societies, advocates of consensus have frequently been inclined to violate the civil liberties of those who disagree with them. Our goal of coalition building



---

simply stresses the need for institutional reform and for political leadership to develop policies that will bring together majorities to support effective national policies in the interest of the general public.

Another important caveat to the coalition building process is the protection of the rights of minorities, as well as the liberty of the entire citizenry of the United States. Although the Panel seeks an attitude of greater concern for the welfare of the entire country in matters such as energy and inflation, a greater concern for unity must not transgress the limits set by the Constitutional law of civil rights and of civil liberties. In short, although the power exercised by special interest groups is of concern, institutional changes that might threaten to introduce the tyranny of the majority so feared by our country's founders must be avoided.

In this light, the Panel's recommended reforms are intended to operate within the constraints imposed by the separation of powers as outlined within the Constitution and by judicial interpretations of the rights and liberties of individuals. Our goal is not some form of "new majoritarianism"; the Panel merely suggests the adoption of reforms in institutions that may facilitate the formation of public policies. In addition, because the causes of our nation's problems are complex, the recommended changes in political institutions can provide only a partial (although a justified and needed) remedy.

Finally—and most importantly—it is important not to lose sight of the numerous successes of our political institutions. In the past 50 years, American political institutions and democratic processes have served the nation well through a worldwide depression and several wartime situations, the continuous acrimonious international rivalry with the Soviet Union, the civil disorders of the 1960s, and the major political crisis of Watergate. Our government has often displayed wisdom, resilience, courage, and (perhaps most important) long-range vision and foresight in projects such as the Marshall Plan. Therefore, caution should be taken before the nation rushes to alter American political institutions in reaction to contemporary frustrations. Major institutional changes should not be initiated unless a thorough diagnosis of the problems in policymaking warrants such action.

Although the general public is satisfied with the Constitution and the bases of our political order, many persons believe that not only more effective public policies are required, but also some changes in our political institutions are needed to produce those effective policies. In response to this public concern, the Panel believes that more effective policies will be gained if reforms in our political institutions

## **Focus of the Report**

---

—the political parties, the Congress, the Presidency and the executive branch, and the courts—encourage the formation of political majorities that are sufficient to enact and support such policies. Given this coalition-building concern, the Panel on the Electoral and Democratic Process examined the political institutions that together form our democratic process.

Recognizing the current decline of the national political parties, in Chapter 2 the Panel emphasizes the need to strengthen these institutions. Accordingly, recommendations revolve around proposals for the selection of delegates for Presidential nominating conventions, the conduct of Presidential primaries, the increase of public participation in the political process, the public funding of Congressional elections, and the limitation of financing by political action committees.

During its discussions on the Congress (Chapter 3), the Panel notes the problems of its fragmented organization, the diminished role of its political parties, and the need for more effective oversight of the executive branch. As a result, numerous proposals are given for the jurisdictional reorganization of committees, the limitation on the number of subcommittees, the simplification of the bill referral system, an experimentation with *ad hoc* committees, the use of current powers and authority by Congressional leaders, the experimentation with various oversight mechanisms, and the use of multiyear authorizations and appropriations.

In respect to the Presidency and the executive branch (Chapter 4), the Panel recognizes that effective direction of policy formulation and implementation requires several reforms. In this regard, recommendations are presented concerning the creation of three policy coordination staffs within the Executive Office of the President for international affairs, economic affairs, and domestic affairs; the creation of a political executive search office; the formation of a public management office; and the establishment of a long-range policy analysis staff. With regard to the executive branch itself, recommendations about personnel are offered concerning the needs to limit the preference given to nondisabled veterans, to develop the skills of mid-level federal managers, to continue support for the Senior Executive Service bonus system, and to improve recruitment of assistant Secretaries. Finally, a modest functional reorganization of the executive branch is suggested, as well as the formation of a citizens' bipartisan committee to evaluate the organization of the executive branch.

Finally, Chapter 5 on the federal courts recognizes the current overburdening of the judicial branch by the growing amount of litigation occurring in the United States. Therefore, the Panel recommends continued experimentation



---

with methods of relieving the workload of the courts. Specifically, several current approaches to such relief are discussed, as well as proposals for alternative modes of dispute resolution.

In the analysis and treatment of the electoral and democratic process in American society, the Panel stresses three important caveats. First, because of time limitations, the decision was made to focus on national institutions, rather than on those at the state and local level. This treatment is not meant to imply that state and local political institutions lack importance. On the contrary, their significance within the American system of federalism requires substantial research and discussion in order to develop useful recommendations for change. The Panel does recognize, moreover, that some recommendations for the reform of national institutions have many implications for state and local institutions. It is not always possible to draw sharp boundaries between national political institutions and state and local ones.

A second caveat of our Panel report is the need to avoid advocating changes in the Constitution. Because it is extraordinarily difficult to predict all effects of an amendment to the Constitution, the Panel was reluctant to suggest proposals for reform of the Constitution. If such proposals should not work well, it is particularly difficult to modify or repeal them. Another difficulty concerning Constitutional amendments is that ratification can be blocked by 13 of the 50 state legislatures; therefore, the process of amending the Constitution sometimes requires mustering an extraordinary political effort for success. The Panel's recommendations, on the other hand, generally do not require an extraordinary mobilization of political support for their adoption. In addition, the population still maintains a high regard for the system of government established by the Constitution. This support for the Constitution is a source of stability for our political system.

A third focus for this report is that the Panel generally discusses the policymaking role of institutions, rather than the citizenship role of individuals. Nevertheless, the Panel does recognize the important position of the individual citizen in the political process of the eighties. Therefore, throughout the report, recommendations emphasize the need for greater public participation in the American electoral and democratic process, for continued sensitivity to the needs of many different groups of citizens, and for a commitment to the protection of minority rights. On the other hand, recommended institutional reforms to enhance coalitions for the support of effective public policy may emerge as the chief participation issue of the eighties; without the opportunity of building effective public policies, individual participation loses most of its meaning.

---

Finally, such institutional reforms may help to restore the diminished confidence of the American public in our political institutions.

In advocating changes in political institutions, it should be noted that the Panel recommends modest shifts in the balances among a variety of desirable goals, some of which may be in conflict. For instance, our goal of reducing the number of subcommittees in the House of Representatives to facilitate speedier action may conflict with the goal of ensuring an equal representation of diverse views before Congress. In this case, as well as in most others, the Panel is not advocating an extreme shift in the balance (eliminating all subcommittees), but rather a movement in one direction over another (toward effectiveness and away from decentralization).

Finally, the members of the Electoral and Democratic Process Panel have noticed that proposed changes in institutions are frequently criticized on the grounds that change may have unanticipated consequences. However, almost all changes in the *status quo* have some unexpected side effects. The criticism that change produces such effects can easily become an argument against initiating any change at all.

In light of this consideration, the Panel has tried to be mindful of the secondary consequences of our proposals. Nevertheless, some will surely have unanticipated consequences. This situation has not prevented us from making recommendations for change, because the Panel regards reform as a continuing process of innovation and subsequent readjustment. Although no one has perfect foresight, if Americans work thoughtfully and patiently throughout the decade of the eighties, the Panel is optimistic that our political institutions can be reshaped to meet the future.

- Cater, Douglass. *Power in Washington*. New York: Random House, 1964.
- Fiorina, Morris P. "The Decline of Collective Responsibility in American Politics," *Daedalus*, (Summer 1980):25-45.
- Gardner, John W. *Toward a Pluralistic but Coherent Society*. New York: Aspen Institute for Humanistic Studies, 1980.
- King, Anthony. "The American Polity in the Late 1970s: Building Coalitions in the Sand," in *The New American Political System*. Anthony King, ed. Washington, D.C.: American Enterprise Institute, 1978, pp. 371-395.
- Lowi, Theodore M., Jr. *The End of Liberalism*, revised ed. New York: Norton, 1979.
- McConnell, Grant. *Private Power and American Democracy*. New York: Knopf, 1966.
- Olson, Mancur, Jr. *The Logic of Collective Action*. Cambridge: Harvard University Press, 1965.
- Ranney, Austin. "The Political Parties: Reform and Decline," in *The New American Political System*. Anthony King, ed. Washington, D.C.: American Enterprise Institute, 1978, pp. 213-248.
- Sundquist, James L. "The Crisis of Competence in Government," in *Setting National Priorities: Agenda for the 1980s*. Joseph A. Pechman, ed. Washington, D.C.: The Brookings Institution, 1980, pp. 531-563.





---

## Chapter 2

# POLITICAL Parties AND Elections

**A**lthough many Americans have been critical of the two major parties, as late as 1964, 76 percent of the voting population in this country expressed personal identification with a major political party. By 1976, that figure had dropped to 63 percent, and current evidence indicates a continuing decline in public identification with the parties.

The Panel on the Electoral and Democratic Process is concerned by the decline of the political parties in America. The extraordinary proliferation of interest groups, many using effective lobbying techniques, has brought a vast number of conflicting demands to bear on our political process. With regard to the coalition-building process, the two major political parties have been important instruments for resolving the differences among myriad local interests and numerous separate pressure groups, thereby helping to alleviate fragmentation within America's political institutions. Therefore, steps to strengthen the major political parties can provide important mediation mechanisms and useful incentives for cooperative policymaking.

Because a political party is essentially a group of people who band together to contest elections, discussions of political parties and of elections are closely related. Given the great overlap between these two topics, they have been combined.

Although the Panel's discussion reflects an emphasis on the two major parties, this focus is not meant to discriminate against the development of third parties. However, because strengthening the Democratic and Republican parties is a major priority, a threshold for public funding of third parties is supported in order to prevent the further fragmentation of the political system. Under the threshold approach, a certain vote percentage is required for the receipt of public funds. Qualifying parties receive funds after the first election, but before the next election. Admittedly, the threshold concept is not a completely satisfactory solution because a growing third party is at a disadvantage in its first campaign, but no better way currently exists to separate an important third party from

---

the multitude of splinter groups that support candidates for election.

Although the current decline in the influence of political parties and in the number of their supporters is well known, the reasons for their drop in importance and popularity have both historical and more recent origins. One set of factors was at work during the Progressive era (1900-17); another during the first two terms of the Roosevelt Administration (1933-41); and a final set after 1968.

## **The Decline of Political Parties in America**

An initial cause of political party weakening was public reaction to their questionable methods at the turn of the century. By the late 19th century, the basic unit of the American political party system was the city or county “machine”—an organization headed by a committee or perhaps by a “boss” which traded public jobs, construction contracts, other political favors, and aid to the poor for votes. Although observers have pointed out the complexities in evaluating the political machine, by current standards it was surely a corrupt type of political organization. On the other hand, the machine taught new immigrants and the poor how to vote and stimulated their interest in politics. It also provided a ladder for the poor to rise in society; as machine leaders became political bosses, their followers became public officials, contractors, policemen, and so forth. In addition, political bosses distributed aid to the poor (to get their votes) at a time when no welfare was available from the federal government.

## *Historical Trends Toward Decline*

Certainly, such political machines were not envisioned by the nation’s founders and did not correspond to the ideals of citizenship and of government in the public interest widely held among the educated middle class at the turn of the century. Partly because of such discrepancies, the middle-class protest movement known as “Progressivism” gathered momentum around 1900, dominating American politics until World War I. The leaders of the Progressives included Presidents Theodore Roosevelt and Woodrow Wilson, Governor Robert M. La Follette of Wisconsin, Governor Hiram Johnson of California, and authors such as Upton Sinclair and Lincoln Steffens.

The Progressives basically believed that political parties as embodied by corrupt local machines should be overthrown and that government should be conducted by citizens “in the public interest.” To achieve such goals, they launched an attack on political parties and their machines by gaining control of state legislatures and city councils and by changing the political rules of the game. The Progressives instituted primary elections to prevent bosses



---

from handpicking candidates for public office. They legislated strict requirements for voter registration to prevent fraud by the parties. The Progressives also brought about extended coverage of civil service rules to require the hiring of more public employees by examination, rather than through the demonstration of loyalty to the machine. These and many other reforms initiated by the Progressives proved popular, and political party organizations based on patronage (giving out jobs, contracts, and gifts) never recovered their former strength in many states, especially in the West and Midwest.

Another historical development—federal social welfare—had a great impact on the influence of political parties, although this outcome was a side effect rather than a direct motivation for its initiation. Before the New Deal, because virtually no federal welfare existed for the poor, the destitute depended on city and county governments and the voluntary charity of the churches and other groups. This distribution of welfare benefits was badly organized and largely inadequate, and local political parties often supplemented these efforts. In gratitude for such benefits, the poor would vote for candidates supported by the party officials. However, at the urging of President Franklin D. Roosevelt, the federal government began to take a programmatic approach to the alleviation of poverty, thereby lowering the incentive for poor Americans to trade their votes to the political machine in return for food and rent money.

Since the Progressive era, the major parties have been in gradual decline, but many observers believe that the process of decline has accelerated since 1968, citing the increasing number of Presidential primaries (from 16 in 1968 to 37 today), the increasing independence of junior members of Congress from party discipline, and the increasing influence of organized interest groups. Of course, such observations lead to the question: What is the cause and what is the effect?

The answers are complex. The increasing number of Presidential primaries, for example, not only has allowed for a more democratic selection of Presidential candidates, but also has encouraged the weakening of the parties. The American political party system has traditionally been based on local parties—city, county, and state patronage organizations, operating in shifting alliances with one another and with the politicians of state government. In the United States, the national party component is less influential than in almost all other democracies, consisting of the party members in both houses of Congress, the political organization of the President (which has often

*Recent  
Evidence of  
Decline*

---

been separate from the formal party organization), and the party's national committee (which has played a secondary leadership role). Formerly, the quadrennial Presidential nominating convention was a meeting of state and local party leaders to nominate a candidate for the Presidency. During the 1970s, however, the expanded number of primaries changed these conventions of the party leadership into meetings of staunch supporters of various Presidential candidates; the delegates are not necessarily strong party loyalists.

Yet, that answer is not complete. Although the increasing number of Presidential primaries might be viewed as a cause for the quickened decline of the party system, it might also be considered a consequence of public disenchantment with the importance of parties. In this example, as well as in most similar examples, the causes and effects may be acting in cycles: disillusionment with the party produces a proliferation of primaries, which reduces the influence of the party, which fuels further disillusionment, and so forth.

Despite the complexity of causes and effects, a number of situations and factors that are associated with recent party decline can be identified:

- *Diminished Trust in Political Institutions.* The most important factor is probably the overall climate of diminished trust for American political institutions. The decline in support for parties and the increase in the numbers of self-styled independent voters and those who split their tickets run parallel to the decline in support for Congress and for Presidents, as well as the increase in public skepticism about the effectiveness and value of government in general.
- *Television Campaigns.* Since the 1960 Presidential campaign, television has played an increasingly important role in political elections. In the 1970s, the candidates found it increasingly more important to buy television time, or to receive other sorts of television exposure, than to obtain the endorsement of the party leaders within a particular electoral district. This emphasis causes a loss in power for party leaders, because the prominence of television allows a candidate to win an election without the support of party politicians.
- *Distrust of Young Adult Voters.* The proportion of the population in the group of 21-35 years of age increased in relation to the over-21 population, and the 18-21 age cohort became eligible to vote. Research has shown that younger people are less inclined to vote and to identify with political parties than older people.



- 
- *Rise in Independent Voters.* The ratio of party-registered voters to independents has decreased. For example, the proportion of voters supporting the Republican party declined from about 30 percent in 1955-64 period to about 20-22 percent during the Carter era, while those who identified themselves as Democrats have also decreased from 46 percent in 1960 to 40 percent in 1976. Although these decreases may reflect differences in group identification (such as the widespread perception that Republicans represent the interests of the wealthy), they may also result from the relative unpopularity of Presidents during this period. The identification of President Lyndon B. Johnson and the leadership of the House of Representatives with the war in Vietnam repelled antiwar Democrats, lessening the degree of their loyalty to the Democratic party. Similarly, the Watergate scandal discouraged citizens from identifying with the Republican party.
  - *Decline in Organized Labor.* The decline of organized labor during the 1970s also hurt the Democratic party—the dominant party of the time. During earlier periods, union support of campaigns was influential, but during the 1970s union leadership experienced difficulty in balancing the new political factors of the times. In addition to this difficulty of adjustment, the proportion of workers who belonged to unions declined slowly during the seventies.

Some countertrends to party decline did appear in Congress. During the Carter Administration, party cohesion in voting among House Republicans was unusually high. Although in 1974, and subsequently, the degree of independence among newly elected Democrats in Congress increased, these Representatives banded together to increase the importance of the House Democratic caucus in relation to senior members (including committee chairpersons). In addition, the highly partisan Democratic Speaker of the House, Thomas P. O'Neill, Jr. (D-Mass.) used his power more actively than the two preceding Speakers—Carl Albert (D-Okla.) and John McCormack (D-Mass.). However, even an assertive Speaker could not rule the independent Congress.

The decline of the parties is important because it has had an impact on the building of political coalitions for timely and coherent policymaking. This situation is exemplified in two situations—Presidential primary elections and Congressional elections and policymaking.



Since 1968 some 20 state legislatures have established Presidential primaries, increasing the total to 37. The result has been an increase of influence for campaign organizations of individual candidates, for those voters who participate in primary elections, and for television coverage. In addition, party organization leaders and party officeholders lost influence because they had a much larger role in delegate selection for the Presidential nominating convention under the various caucus systems that preceded the introduction of primaries.

Another effect of the increasing number of Presidential primaries is the advantage it gives to those candidates who are willing and able to conduct full-time campaigns for a year or more before the convention. Previously, a candidate would contest perhaps 5 or 6 of the 15 or so primaries, while negotiating with Governors, mayors, and other leaders of state and local parties for delegates. With the increase in primaries, however, a successful candidate need not have close ties to other party leaders to win the nomination for President. In addition, because it is advantageous to campaign full-time for 1 or 2 years preceding the nominating convention, officeholders are at a disadvantage in contesting the nomination. A recent side effect of this phenomenon is that incoming Presidents do not necessarily have first-hand knowledge of the federal government; they must expend considerable effort during their first year in office to become acquainted with the system.

The haphazard scheduling of the current primary system has also placed a premium on individual candidate organization. Because states decide individually to hold primaries, the dates for such elections have become scattered over the 6 months preceding the party convention. The sheer logistical challenge of appealing to such dispersed electorates not only puts candidates holding important political offices at a disadvantage, but also requires an enormous amount of time for organizing and conducting primary campaigns. The effectiveness of candidates' personal campaign organizations has become an important factor in winning the nominations.

The primary system also gives undue weight to the decisions made by atypical electorates. In 1976, only about 25 percent of the eligible voters actually cast ballots in primaries. These voters are not typical of those who participate in the general election, because a smaller proportion of independents are able to vote in primaries, and because strong partisans are more likely to vote than weak partisans. (Normally, those registered as independents cannot vote in a Presidential primary, although some states allow independents to choose a party at the polling place.)

Another effect is that atypical states have a disproportionate amount of influence on candidate selection. Voters in Iowa, New Hampshire, Florida, and a few other states with early delegate-selection processes have much more impact than voters in the other states. (Iowa uses a caucus approach that involves considerable activity by the general public, while New Hampshire and Florida use primary elections.) This undue influence is basically the result of greater media attention (see Table 3). In 1976, for instance, while 100 television network news stories were presented on the New Hampshire Democratic primary (38 delegates), only 30 such stories were televised on the New York primary (428 delegates). Accordingly, winning or showing well in the New Hampshire primary and one or two other early delegate-selection events is disproportionately important in projecting a successful image to attract votes and campaign contributions. Early success can create a bandwagon that influences the results in later primaries.

**Table 3**  
**Number of Television Network News Stories**  
**on Early Democratic Primaries, 1976**

Primary State	Date	Number of Stories	Number of Delegates	Number of Stories per Delegate
New Hampshire	February 24	100	38	2.63
Massachusetts	March 2	52	147	0.35
Vermont	March 2	6	30	0.20
Florida	March 9	50	147	0.34
Illinois	March 15	38	270	0.15
North Carolina	March 23	19	115	0.17
New York	April 6	30	428	0.07
Wisconsin	April 6	42	113	0.37

Source: Donald R. Matthews, "The News Media and the 1976 Presidential Nominations," in *Race for the Presidency*, James David Barber, ed. (New York: Columbia University, The American Assembly, 1978), p. 65.

With regard to the coalition-building process, the current effect of the large number of primaries encourages individualism (personal campaign organizations) rather than negotiation with major leaders of the political parties. In addition, the system encourages candidates to pay special attention to the desires of voters in a few early primary and caucus states.



Another result of the weakened party system is the way in which members of Congress, especially Representatives, approach the reelection process. They have come to rely on their own political organizations, usually an amalgamation of friends and of interest groups, because parties at the local level can no longer provide either substantial funds or active volunteers. Candidates have had to find their own followers, funds, and volunteers.

The gap left by the weakened local party has largely been filled by active interest groups—in particular, by political action committees (PACs) of such groups, which have large financial resources to contribute to Congressional campaigns, and by single-issue groups, which may not necessarily contribute funds but can provide a loyal constituency of voters. As a consequence of this electoral support, members of Congress have become increasingly responsive to well organized groups.

With regard to Congressional policymaking, the consequences of weakened parties are numerous. Because members depend on their own political organizations, they are more free to take independent courses on important votes, ignoring the wishes of their Congressional party leaders. For example, a recent bill to limit increases in hospital charges—a key item in President Jimmy Carter's hospital cost-containment program—failed to reach the floor of the House of Representatives for debate because it was defeated 21 to 22 in committee. Although this measure may not necessarily have passed a floor vote, if a few more Democratic committee members had voted with the party, it could have been voted on by the entire House.

Another consequence of weakened parties is that members of Congress have become increasingly vulnerable to the pressures of interest groups—especially those that contribute to their campaigns. The result is that some localities and some interest groups are effectively represented, but particular demands and specific decisions are not easily combined into general, consistent policies that can be supported by a majority.

Finally, members are increasingly accused of concentrating on reelection efforts by engaging in virtually continuous campaigning. While reelection efforts are a necessary and proper activity for members, the concern arises that this activity is pursued at the expense of other duties. In addition, the sort of quiet compromise that is necessary to create decisionmaking majorities is not the sort of activity that helps members get reelected.

In light of the trend of weaker political parties, the Panel views processes to strengthen the parties as important steps in encouraging the coalition-building approach to



---

decisionmaking. Strong parties and party leadership can provide incentives for cooperation in policymaking.

In calling for strengthened parties, however, it is important to note that the Panel is *not* engaging in nostalgia for or encouraging the restoration of the old-style machine politics and smoke-filled backrooms. Indeed, even the Presidential nominating system used by the Democrats in 1968—which included the selection of about 20 percent of the delegates during the preceding calendar year by party officials—is undesirable. However, the effects of the various decline trends have been extreme in undermining the strength of the institution of political parties.

In regard to this situation, the Panel offers several reform proposals for the selection of delegates to Presidential nominating conventions, the conduct of Presidential primaries, the increase of public participation in the political process, the public funding of Congressional elections, and the limitation of financing by political action committees. While adoption of the proposals will enable parties to become *somewhat* stronger, it should be clearly understood that American political parties even then will not be strong enough to implement all of the coalition-building processes that the country requires.

Finally, the Panel also has no illusions that the problems of our political parties can be resolved by this particular set or by any other group of recommendations. The factors that led to the decline of parties are complex and interrelated, and have built up for a long time. Strengthening the parties will require patient effort over time. The Panel believes, however, that the balance can be shifted toward strengthened parties and that these recommendations will help in that effort.

**A certain percentage of the delegates at a party's Presidential nominating convention—perhaps one-fifth to one-third—should be set aside for a party's elected officeholders, major current and recent candidates, and its own officers.**

*Presidential  
Nominating  
Convention  
Delegates*

This proposal is not intended to replace primaries, but merely to restore some balance to the current system, whereby party leaders have almost no influence over the selection of a party's Presidential nominee. Strengthening the role of the parties as an institution could result, because the proposal would increase the role of party professionals, as opposed to the influence of those persons who are active in the individual campaign organizations of candidates.

Special care should be taken to ensure that minority groups, which have only recently become better represented at party nominating conventions, are not negatively

---

affected by the change. Demographically, political officeholders and candidates still underrepresent blacks, Hispanics, other racial minorities, and women. Leaders of both major parties should continue to pressure state parties and the candidates (as they have since 1972) to select slates of convention delegates that adequately represent minorities and women.

There is a wide choice over which “party leaders” should be included in such a system. A somewhat modest proposal would use state chairpersons and national committeemen and committeewomen as *ex officio* voting delegates in the Presidential nominating convention, thereby adding only about 100 delegates to each party’s convention. A more far-reaching proposal would add about 500 to 600 delegates to each convention. Party leaders could be defined in each state to include the party’s most recent nominees for Congress and for Governor. The advantage of this proposal is that many of the officials with whom the President would work would participate in the selection of the candidate. Such peer review would also increase the likelihood of choosing a nominee who is well known to members of Congress and to Governors and well respected by such party leaders, enhancing cooperation between the President and other elected officials.

In order for true peer review to result, the party leader delegates should be free to exercise independent judgment, rather than bound by the results of primaries. Although some may not want to attend conventions for a variety of reasons, such as unwillingness to alienate the candidates, party leaders should not be allowed to exercise a vote *in absentia*. For their participation to be most effective in strengthening the parties, such delegates should be in actual attendance.

This proposal is best implemented by the parties themselves. Indeed, the Democratic party has already experimented with such a plan. In 1980, 10 percent of each state’s delegates were selected from among the leaders. The selection of these leaders was not automatic; the definition of party leadership varied from state to state. Some delegates were chosen by the state committees and some were chosen by the other previously elected delegates. At the convention, these delegates were bound by the same rules as the other delegates; they were not given the opportunity to exercise independent judgment.

**Primaries should continue to play a major role in the selection of Presidential nominees, but only four dates, organized by time zone and separated by a month, should be used. There should also be a shorter campaign period.**

*Presidential  
Primaries*



---

The Panel believes that because primaries are useful in encouraging public participation in the delegate selection process, the option of holding primary elections should be retained by the states. On the other hand, because retaining maximum flexibility is also important, state participation in the primary election process should not be mandated. States should continue to have the freedom to experiment with other ways to select delegates, such as party caucuses and conventions. Our recommendation is calculated to remedy several of the most obvious flaws of the current system, while retaining the possibility of experimentation with other delegate-selection options.

First, it is important to decrease the number of primary election dates. Under the current system, candidates are required to spend too much time building campaign organizations and visiting widely scattered states before the primary season. This situation leads to advantages for candidates who are financially independent and who are not occupied by other time-consuming jobs competing for their attention. Allowing only four dates for primaries should enable national officeholders to compete on a more equal basis with other candidates, thereby encouraging candidates with more experience at the national level.

Several primaries are preferable to one, because the candidates should be tested before the electorate in a series of different elections to elicit their various strengths and weaknesses of personality and program. In addition, it is advisable for candidates to take positions on some state and regional issues and to learn about the different needs of various sections of the country.

Holding four primaries one month apart, organized by time zone, as proposed by Sen. Howard H. Baker, Jr. (R-Tenn.), seems preferable to organizing primaries by region—a New England primary, a Mid-Atlantic primary, a Deep South primary, and so forth. Winners of regional primaries might become regional “favorite sons,” resulting in a nominating convention characterized by competition among regional candidates and sharpened conflicts between regions. On the other hand, because time zones cut across the traditional regions, time zone primaries could prevent an excessive identification of primary results with a particular region. In addition, separating each primary by a month could limit the role of the national media in creating a bandwagon for a candidate. Inevitably, the winners of the first primary would be hailed as front runners. However, the month separation time could allow momentum to die down so that more serious attention is paid to the candidates’ positions.

The boundaries between primary regions should be drawn with care. Some exceptions to a strict time zone division would probably have to be made. For example,



---

the Mountain time zone has such a small population that perhaps this primary could also include a populous state such as Texas. If a state is divided between two time zones, the entire state might be placed in one primary zone. Careful attention also should be paid to which primary Alaska, Hawaii, Puerto Rico, and the U.S. territories are assigned. Even after consolidation, the first primary often might become the most important; hence, the voting order of the time zones could be chosen by lot or by regular rotation.

States that opt to participate in Presidential primaries would also have to consider whether their primary dates for other elected offices should be changed to coincide with the Presidential primary day. It would be unfortunate if public participation in other elections were discouraged by holding them on days that differed from the Presidential primary. Low voter turnout is already a significant problem; care should be taken to ensure that citizens do not face additional barriers to voting.

Finally, the primary season could be shortened by limiting the financial rewards for candidates who start campaigning early. Under the current system, candidates who hold demanding offices are at a disadvantage in competing with candidates who do not. Although long campaigns have some merit in exposing the candidates to voters, the fundraising advantages should be lessened for candidates who have the funds and the time to start campaigning early. To alleviate this problem, Congress could determine that any money raised before a certain date (for example, 6 or 8 months before conventions) would be ineligible for matching by federal funds. Under this system, for example, primaries could be held on April 1, May 1, June 1, and July 1 before conventions in August; money raised before January 1, therefore, would not be matched by federal funds. Although this measure would not stop early campaigns completely, it would make early fundraising less profitable.

**Public participation and interest in politics and in political parties should be increased by a variety of means, including providing television time for the parties, making voter registration easier, and making holidays of the Presidential primary day and the general election day.**

*Public  
Participation*

Public participation in the American political process should be encouraged. To increase public awareness of the political parties, time should be set aside by the television networks for use by the two major parties. Time could also be donated to minor parties, if they passed a required threshold of voter support in the previous national election.

---

The time set aside could be used by the parties in any way they choose: to raise funds, to explain their positions, or to dramatize the ways in which they differ. At the very least, such television exposure could help raise the level of public understanding of the parties' place in the political system.

Participation by eligible citizens in the election process should also be promoted. The Panel does not recommend either making voter participation legally compulsory (as is occasionally suggested) or having the federal government mandate specific mechanisms that the states should use to increase participation. However, states should experiment with methods for easing barriers to voting, particularly the registration requirement. "Same-day" registration (at the polls on election day) or registration by mail might work well in some places, but not in others. Admittedly, special care has to be taken to ensure against fraud, but same-day registration has worked well in states where it has been tried. To make registration easier, an emphasis should be made on informing voters, particularly new ones, of the procedures required for voting.

Another barrier to public participation is that national elections are held on regular workdays, making it more difficult for many citizens to vote. If election Tuesday in November were made a national holiday, voting would become more convenient for the majority of the voting population who work. Such holidays could also help to build public awareness of and interest in the election process. Of course, this proposal could be very expensive in terms of time lost to employers; therefore, careful study should be made of its costs before implementation. Although measures such as same-day registration and election-day holidays do not resolve the basic causes for low voting rates, such measures could lead to an increase in voting and interest in politics on the part of some voters.

**Public funding for Congressional elections should be adopted, and a portion of these funds should be granted to the national committees of the parties to allocate to individual candidates.**

*Public  
Funding for  
Congressional  
Elections*

Even though public confidence in Congress as a whole has declined sharply since the mid-1960s, public support for individual members is quite high. During the 1970s, the reelection rate of House incumbents was impressive—ranging from 88 to 96 percent; in 1980, 90 percent of incumbents seeking reelection were successful. The reelection rate of Senators during the 1970s was substantially lower, ranging from 64 to 85 percent.

Many factors help to explain the high reelection rates of incumbents. One is the perception of "winability."



---

Individual decisions to contribute to a campaign and to vote are often based on the perception of how likely a candidate is to win. Other complex factors in the reelection of incumbents include their success in fundraising, their attention to constituency service, the higher name recognition of incumbents among the voters, and the resources of their offices (particularly staff and free mailing privileges).

Some techniques that members use for reelection can be quite valuable to both constituents and the Representative. For example, many members stress constituency service (also called casework) in the operations of their offices in Washington, D.C., and in their districts. Casework involves facilitating interaction between government agencies and constituents, providing constituents with an unofficial ombudsman. Casework may also aid members, keeping them informed of their constituents' problems and alerting them to problems in government agencies that might not have been revealed otherwise. The disadvantage of close attention to casework is that members' attention may be diverted from other aspects of their job, such as the thoughtful consideration of legislation.

Although the reelection process holds both advantages and disadvantages, the only aspect of the system that seriously concerns all Panel members is the fundraising process. Because of the diminished role of local party organizations, members of Congress have become too dependent on interest groups for the funds that they require to run for election. Accordingly, some system of partial public financing of Congressional elections should be implemented.

The basic argument for public funding of elections is that those who contribute large sums to political campaigns thereby acquire undue influence over elected officials. In recognition of this possibility, during the 1970s Congress substantially reformed the financing of Presidential campaigns, but made less progress toward reform of Congressional campaign funding. Two major pieces of legislation—the Revenue Act of 1971 and the Federal Election Campaign Act of 1971 (FECA)—provide a federal tax credit or a tax deduction for contributions to political campaigns; require disclosure of contributors to campaigns for Congress and the Presidency; fund Presidential elections; and set limits to Presidential campaign spending. (The latter two provisions did not apply to the 1972 Presidential election and were first used in the 1976 election.) In 1973 and again in 1974, the U.S. Senate approved amendments providing for public financing of Congressional campaigns, but the House failed to concur.

In 1974 Congress passed amendments to FECA that extended public financing to cover Presidential primary campaigns. Limits were also set on political contributions



---

and on overall campaign expenditures for both the Presidential and the Congressional races, and the Federal Election Commission (FEC) was established. Although some aspects of the law were overturned by the U.S. Supreme Court in *Buckley v. Valeo* (1976), in 1976 and 1980 public funds were provided for the partial funding of Presidential primaries and almost total funding of the major parties' national conventions and general election Presidential campaigns.

Although in 1976, the *Buckley v. Valeo* decision upheld the Constitutionality of public funding for Presidential campaigns, the Supreme Court also ruled that candidates who do not accept public funding are not bound by campaign expenditure limits or by personal contribution limits. This decision means that for any Presidential candidate who does not accept public funding and for all Congressional campaigns, the candidates are able to spend unlimited amounts on their campaigns and the candidates and their families are able to give unlimited amounts to their own campaigns.

Given the experience with public funding of Presidential campaigns, the Panel recommends a measure similar to those that have in the past been introduced in the House of Representatives by Morris K. Udall (D-Ariz.) and John B. Anderson (R-Ill.) and by Abner J. Mikva (D-Ill.) and Barber B. Conable, Jr. (R-N.Y.). These proposals would finance the general elections of members in a manner similar to the current financing system for Presidential primary elections, wherein candidates are given public funds to match small private contributions. Although Congressional candidates would continue to finance their primary elections, partial public funding would be provided for the general elections. The major objection to public funding for Congressional primaries is that such a move would further weaken the parties by making nuisance challenges for the party nomination more likely. Because of this difficulty, funding for general elections should be implemented first, and later extended to primaries, if that action seems feasible.

Public funds would be provided to candidates by matching grants to small contributions from individuals. Spending limits, set at generous levels, should also be established for the general election campaigns of those who accept public funds. Matching grants would also be limited to a given proportion (perhaps 25 percent) of the total spending limits.

Some legitimate objections to public funding exist—for instance, the fears that members of Congress would become estranged from their districts and states and that only incumbents would benefit from such legislation. Incumbents are already substantially advantaged under the current system; substantial resources come with their

---

position and fundraising is generally easier for them. Incumbents in the House of Representative are difficult to defeat. A challenger's chances are increased if a great deal of money is spent to become well known in a district, but many have more difficulty in raising funds than incumbents. Accordingly, the system of matching grants should be extended to serious challengers, with all candidates held to a spending ceiling during the general election.

Another aspect of our proposal is the recommendation that public funds should be granted to national committees of qualifying parties as well as to individual candidates.\* Indeed, in many democracies, national party committees control the distribution of campaign funds to individual candidates. For example, West Germany, Italy, Norway, and Israel provide public funding for political parties, which determine how the money is allocated in campaigns. Part of this pattern reflects the purpose of encouraging legislators to follow the position of party leaders, although other reasons, such as a unity through commitment to ideology or a tradition of deference to political leaders, also play a part.

Under the Panel's proposal, the national committees would distribute the funds to the campaigns of individual candidates, thereby increasing the disposition of candidates to follow party positions on issues. Such funding also would allow the parties to penalize incumbents if they have been flagrantly disloyal, and to warn other incumbents of the consequences of disloyalty to the party. The degree of party discipline involved would be mild compared to Great Britain, but it would not be wholly negligible. In addition, the national committees would have only sufficient funds to give substantial support to an individual candidate (perhaps \$10,000 per candidate for the House of Representatives) rather than providing most of the funding for Congressional campaigns.

**To diffuse some of the influence currently held by interest groups over members of Congress, limitations should be placed on the total amount of funds members may accept from these groups' political action committees.**

*Limitations on Contributions by Political Action Committees*

Concern has arisen over the impact of special interest groups and their political action committees (PACs) on the candidates to whom they contribute campaign funds. PAC contributions to Congressional candidates have steadily

---

\* One member of the Panel on the Electoral and Democratic Process supports the public funding of candidates for federal office, but objects to the concept of granting public funds to the political parties.



---

increased—from \$12.5 million in 1974, to \$22.5 million in 1976, to \$35 million 1978, to an estimated \$55 million in 1980. Although members of Congress are limited in the amount of money they can accept from a single PAC per election (\$5,000), such groups often have interlocking memberships and interests, and no limits have been placed on the total number of PACs that may contribute to individual campaigns. Inevitably, a chain of obligation and access is built around such contributions, leading members to become overly responsive to and anticipatory of the reactions of interest groups.

The Panel's proposal, like the Obey-Railsback bill (passed by the House of Representatives in 1979 but not yet considered by the Senate), would limit the total amount of funds members of Congress could accept from PACs. The proposal, which would be most effective in combination with partial public financing of elections, is aimed at increasing the role of the small private contributor and decreasing the influence of interest groups. In addition, the proposal for public funding of Congressional elections would allow matching federal funds only for small contributions from individuals, not from PACs. Finally, consideration should be given to increasing the influence of private citizens by raising the limit that individuals can contribute to a single Congressional campaign from the current \$1,000 up to the \$5,000 PAC limit.

All of the Panel's recommendations for Congressional elections are intended to strengthen the parties, to decrease the importance of interest group funding in Congressional elections, but to retain the accountability of members to their constituents. Several members of the Panel, however, believe that the greatest barrier to Congressional election reform is that the 2-year term of House of Representative members is too short and that a Constitutional amendment should be enacted to increase the term of House members to 4 years.

Because of their short terms, Representatives campaign almost constantly for reelection. A lengthened term would serve two purposes. First, it would facilitate the management of the House. Because members would spend more time in Washington and less time campaigning, they would have more time to devote to their legislative and oversight responsibilities. Second, a longer term would free members to take controversial positions. Representatives would feel easier about disagreeing with powerful interest groups if they had more time before an election to reconcile their constituencies to their position.

Some members of the Panel believe that the 2-year term should be retained. The present system of biennial

### **Lengthened Congressional Terms**



---

elections requires Representatives to be responsible to both their constituents and to the President of their own party. Candidates are more accountable to their constituents because without Presidential coattails in mid-term elections, they have to use their own resources and records to get reelected. Representatives might pay less attention to their constituents if they had to face the prospect of reelection less often. Moreover, during Presidential elections, a strong national ticket can help elect Congressional candidates of the same party, which is useful for reminding Representatives that their fates are often linked to the President's.

On balance, however, the Panel is convinced that Constitutional amendments should not be attempted unless there is overwhelming evidence in their favor. A great burden of proof lies on proponents of Constitutional change to demonstrate that the benefits of such change outweigh the risks of changing a system that has worked well for so long. The amendment process is too onerous to be undertaken lightly, and the weaknesses of the current system may not be sufficiently serious to risk the unanticipated consequences of such an amendment. Therefore, although the Panel does not recommend that such an amendment be passed, enough arguments exist in its favor for Congress to examine thoroughly its advantages and disadvantages.

- Alexander, Herbert E., ed. *Political Finance*. Beverly Hills: Sage Publications, Inc., 1979.
- American Enterprise Institute. *Public Financing of Congressional Campaigns*. Washington, D.C.: The American Enterprise Institute, 1978.
- Barber, James David, ed. *Race for the Presidency*. New York: The American Assembly, 1978.
- Brody, Richard A. "The Puzzle of Political Participation in America," in *The New American Political System*. Anthony King, ed. Washington D.C.: American Enterprise Institute, 1978, pp. 287-324.
- Dahl, Robert A. *Who Governs?* New Haven: Yale University Press, 1961.
- Fiorina, Morris P. *Congress: Keystone of the Washington Establishment*. New Haven: Yale University Press, 1977.
- Greenstein, Fred I. *The American Party System and the American People*. Englewood Cliffs, N.J.: Prentice-Hall, 1970.
- Hamilton, Alexander; Madison, James; Jay, John. *The Federalist Papers*. New York: New American Library, Mentor Paper Ed., 1961.
- Hofstadter, Richard. *The Age of Reform: From Bryan to F.D.R.* New York: Vintage Paper Ed., 1955.
- Key, V.O., Jr. *Southern Politics*. New York: Alfred A. Knopf, 1949.
- Kirkpatrick, Jeane J. "Changing Patterns of Electoral Competition," in *The New American Political System*. Anthony King, ed. Washington, D.C.: American Enterprise Institute, 1978, pp. 249-285.
- League of Women Voters' Education Fund. *Choosing the President 1980*. Washington, D.C.: League of Women Voters, 1980.
- Malbin, Michael J. *Parties, Interest Groups, and Campaign Finance Laws*. Washington, D.C.: The American Enterprise Institute, 1980.
- Mayhew, David R. *Congress: The Electoral Connection*. New Haven: Yale University Press, 1974.
- Merton, Robert K. *Social Theory and Social Structure*, revised edition. New York: The Free Press, 1968.
- Polsby, Nelson W. and Wildavsky, Aaron. *Presidential Elections*, fifth ed. New York: Charles Scribner's Sons, 1980.
- Powell, G. Bingham, Jr. "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences," in *Electoral Participation: A Comparative Analysis*. Richard Rose, ed. Beverly Hills: Sage Publications, Inc., 1980, pp. 5-34.
- Ranney, Austin. *The Federalization of Presidential Primaries*. Washington, D.C.: The American Enterprise Institute, 1978.
- Ranney, Austin. "The Political Parties: Reform and Decline," in *The New American Political System*. Anthony King, ed. Washington, D.C.: American Enterprise Institute, 1978, pp. 213-248.
- Verba, Sidney and Nie, Norman H. *Participation in America: Political Democracy and Social Equality*. New York: Harper & Row, 1972.
- Wiebe, Robert H. *The Search for Order: 1877-1920*. New York: Hill & Wang Paper Ed., 1967.





---

## Chapter 3

# THE Congress

**I**n accordance with the coalition-building theme—that decisionmaking majorities should be created to ease policymaking on important issues of the day—the Panel on the Electoral and Democratic Process notes two facets of Congress that have proven in the past to be barriers to such processes—its organization and the weakness of the parties. Accordingly, the Panel hopes to enhance the Congressional decisionmaking capability by recommending various steps to reorganize the chaotic committee systems, particularly in the House of Representatives, and to strengthen political parties in Congress as mediums for negotiation and compromise. In addition, the Panel has several suggestions for improved Congressional oversight of the executive branch.

Although general public support for public and private institutions has generally diminished since the 1960s, support for Congress is particularly low. Since the mid-1960s, voter participation in Congressional elections has declined—from 46.3 percent of the potential voting population in 1962 to 35.1 percent in 1978. Public confidence in Congress and its leaders has shown similar disturbing decreases. According to a recent public opinion survey, the number of people who express a great deal of confidence in Congress as an institution has declined from 42 percent in 1966 to 18 percent in 1979, although similar surveys also show that at the same time, citizens often hold their own Representatives and Senators in high regard.

The reasons for the loss of public support and confidence are unclear. In part, the attitudes toward Congress reflect a deepening loss of faith in all our national institutions. In part, the decreasing figures also indicate the public response to a variety of political, financial, and sexual scandals involving some members of Congress during the past decade. A major cause for the loss of confidence, however, is the widespread belief that although the country faces serious problems, our political institutions, including Congress, are exhibiting greater difficulty in

### Barriers to Timely Decision- making in Congress

---

reaching important policy decisions than before. With regard to Congress, the reasons for less timely decision-making are numerous.

Consistent policymaking has clearly become more difficult for Congress because the influence of organized interest groups has increased. One source of pressure is “iron triangles”—coalitions among interest groups, executive branch agencies, and Congressional committees and members. As the number and intensity of special interest groups has increased, it has become increasingly important for Congress to balance the variety of interests. Yet, conflict between some organized groups has become increasingly difficult to reconcile, because of the new prominence of single-issue groups—such as those focused on abortion laws, hand gun control, or the passage of the Equal Rights Amendment—which are often characterized by an unwillingness to compromise.

In addition to interest groups and iron triangles or “subgovernments,” the job of Congress has also been made difficult by the sheer burden of the workload. Both House and Senate committees have stressed that members are overworked, lacking sufficient time for careful reflection on policy matters. In 1977 the House Commission on Administrative Review, chaired by Rep. David R. Obey (D-Wisc.), reported that House members were overworked; the Select Committee to Study the Senate Committee System, chaired by Sen. Adlai Stevenson III (D-Ill.), came to the same conclusion about Senators. The Obey commission estimated that the average member has about 11 free minutes during the work day for thoughtful consideration of policy matters. Another example of excessive workload is the increase in the number of roll-call votes on the floor of both Houses. In the House of Representatives, the number has increased from 266 in 1970 to 834 in 1978. In addition, the workload of Congressional committees is also rising. During 1977 and 1978, there were 6,771 meetings of House committees and many subcommittee meetings.

The workload of Congressional members has also increased because of the expanded amount of personal attention they give to their constituents. Indeed, many members have encouraged new demands from constituents by opening district offices and by sending newsletters and other mailings to their districts, prompting constituents to contact them about problems. In 1960, only 4 percent of the House members had offices in their district; by 1974 that number had increased to almost 50 percent. Whether measured by the pieces of mail received or by the scope of their requests, the demands from constituents have increased.

Coupled with an increased workload, unwieldy committee and floor procedures have also made the



---

decisionmaking process in Congress more difficult. For Congress the problem is not that consistently bad decisions are made, but that decisions can often be delayed for long periods. Indeed, it is easier for affected interest groups to prevent legislation from reaching a floor vote than to defeat a bill during the voting process.

With regard to committee procedures, some practices such as the irregularity of meeting times and the lack of advance written testimony have led to unfruitful hearings that are frustrating for both witnesses and Congressional members. Because of many competing claims on their time, attendance by committee members is typically low. In addition, members are often ill prepared for hearings, and their questions may not shed much light on the competing claims of witnesses.

Another weakness of committee procedures is the lack of action-forcing mechanisms. Committees are able to stall or kill important legislation by refusing to act. The danger of committee inaction is particularly acute when the same bill is referred to more than one committee, because the degree of cooperation among more members that is necessary for decisions to be made increases proportionately.

In regard to floor procedures, action-forcing mechanisms are also needed, particularly in the Senate. A long-standing criticism of the Senate has been the manner by which it handles important business on the floor. Current scheduling procedures are disorderly; important policy matters compete with trivial business for attention. Unlike the House, Senate floor actions can also be stalled because of the Senate's traditional tolerance of unlimited debate (filibusters) by members who feel intensely about certain issues. The threat of a filibuster is still effective, even though the Senate has reduced the number of assents required for passage of a cloture vote to end debate—from two-thirds of those present and voting to an absolute 60 votes.

A final weakness of floor procedures in the Senate is the need for more stringent germaneness rules. Because items irrelevant to bills under debate can be discussed and because non-germane amendments can be offered to legislation, the Senate has become known for its "Christmas-tree bills," which include a variety of special amendments written for the benefit of small numbers of special interest groups or constituents. In the House of Representatives, the use of germaneness rules has generally prevented Christmas-tree bills, but a similar problem arises in House use of appropriations riders. These riders are amendments to appropriations bills that are justified as limits on spending levels, but in practice are often used to set federal policy. An example is the Hyde Amendment, which prohibits the use of federal funds for abortions.



This brief catalogue of barriers to timely Congressional decisionmaking perhaps portrays Congress too negatively; Congress does have strengths that no other branch of government can match. It is still the best national institution for reconciling competing interests. Because so many people are involved in Congressional decisions, Congress tends to act more slowly and cautiously, and therefore its decisions may be perceived as fair by the public. In addition, the small size of Congressional districts enables some groups to attract the attention of some Representatives; it may be much more difficult for them to gain national attention. Congress can also provide a safety valve for discontent during times of shortages and conflicts by providing a forum for the expression of a variety of views.

Certainly, not every interest is represented effectively in Congress. Middle and upper class citizens are still much more likely to join interest groups that lobby Congress than are poor people, and the resources among organized groups varies widely. In general, however, average citizens have better access to and are more likely to receive attention from their members of Congress than from other branches of government.

In many ways, Congress is more accountable to the average citizen now than ever before. During the 1970s, many reforms opened the Congressional process to public scrutiny. Information on how Representatives vote on the floor and in committees is now available to constituents. In addition, most committee hearings (wherein witnesses testify on proposed legislation) and markup sessions (when bills are rewritten) are now open to the public. Finally, many of the floor processes in the House have been televised so that constituents can watch.

Unlike some critics, this Panel does not believe that the reforms of the 1970s that made Congress more open also made it more ineffectual. More democratic internal procedures and increased public scrutiny were long overdue in order to make Congress more responsive to the nation and to increase Congressional accountability to constituents. During the 1970s, the House and Senate also acted to improve the public image of Congress through the implementation of stricter Congressional ethics rules. New standards for conflicts of interest, limitations on outside earnings, and stricter constraints on the use of office funds reflect an awareness of the need for changes in the wake of the Watergate affair and various scandals involving members of Congress in the previous decade.

Although identifying Congressional strengths is important, modifying Congressional weaknesses—such as its vulnerability to organized groups, its heavy workloads, and its unwieldy procedures—is an important task of the 1980s.

---

In light of this situation, the Panel encourages the strengthening of the coalition-building process in Congress as one method to facilitate timely and coherent decisionmaking. Another reason for renewed interest in coalition building is the widespread belief that the 1980s may be a time of relative scarcity; coalition building may become harder during times of fierce competition for limited resources because members may be increasingly pressured to obtain additional benefits for their constituents and for lobbying interest groups.

Very capable individuals have usually been elected to serve in Congress, but this is not enough to ensure the effectiveness of Congress as an institution. There has to be a way of melding the members into a policymaking body; there has to be a way to encourage them to compromise some short-term interests for the long-term interests of the nation. If Congress is to develop national policies and to reconcile seemingly irreconcilable interests (such as the opposing interest groups involved in the abortion issue), countervailing pressures to local or special interest group demands are needed to build decisionmaking majorities.

In line with this concern for coalition building, the Panel focuses on two commonly criticized aspects of Congress—the current organization of Congress, particularly of the House, and the weakened influence of the party system in Congress. In addition, the Congressional oversight and budgetary processes are also examined with a view to improving the accountability of the executive branch. It should be noted that the Panel has focused primarily on coalition-building processes in the House of Representatives because of its particular needs. Although the Panel does not expect the reforms proposed for each topic to resolve immediately the many problems facing Congress, the Panel views the proposals as important first steps toward improving the functioning of and decision-making by Congress, which should also result in improved public attitudes toward this valuable institution.

Coalition building in Congress was not as essential before the 1970s, primarily because Congress was run in an autocratic fashion by a few senior leaders of the majority party. To a great extent, if these party and committee leaders could reach agreements among themselves, the other members followed. Under the guidance of powerful committee chairpersons, junior members were taught to follow their committee leaders and to act as apprentices on committees and in other parts of Congress. Issue-oriented members worked through their committees; committee chairpersons could reward some with favored subcommittee assignments and punish others by withholding valued

## **The Problems of Congressional Committee Organization**



---

subcommittee assignments and chairmanships. At its best, these patterns of power enabled chairpersons to discipline rebellious members, ensuring committee responsiveness to one person. Of course, chairpersons differed widely in their willingness to use their powers of discipline, and committees differed widely in their effectiveness in decision-making.

Today, the situation is very different. One reason is the turnover rate of members of Congress. Partially because of an increase in voluntary retirements, at the start of the 96th Congress in 1979, over half of the 435 Representatives (220) had served 4 years or less, and 55 of the 100 Senators had served 6 years or less. Within a very brief time, Congress has had to absorb an extraordinary number of new members who have often not shared the traditions and values of the more senior members. This high turnover in the House of Representatives is coupled with a fragmentation of authority among many committee and subcommittee leaders. During the 1970s, the House made many procedural changes to make committee chairpersons more responsive to the majority party and to the members serving on their committees. Chairpersons are now circumscribed in their ability to assign members to subcommittees. They have to work under formal committee rules, and their appointments are automatically held up for ratification by the Democratic caucus (by secret ballot) at the beginning of each session.

This formal decrease in the authority of House committee chairpersons has been augmented by the dramatic increase in subcommittees.<sup>1</sup> Although the number of standing committees has remained fairly constant, increasing only from 19 to 22 in the past 25 years, the House has been unwilling to limit its number of subcommittees. These have increased from 69 in 1951-53 to 147 in 1979-81, and that total is even greater if one adds the subcommittees of special committees (those formed to study particular issues) and joint committees (whose membership includes both Representatives and Senators). (For a complete list of standing committees of both the House and the Senate, see Table 4.)

This increase has given authority to more members of Congress because of the greater number of subcommittee chairperson positions. Indeed, the old power of the committee has devolved to subcommittees to a considerable extent. In addition, the 1971 Subcommittee Bill of Rights established by the House Democratic caucus barred Representatives from chairing more than one subcommittee. The result has been that over one-half of the House Democrats now are in some leadership position. Although the Panel would not encourage the old system of rule by committee chairpersons this decentralization of authority in



U.S. Senate

- Agriculture, Nutrition, and Forestry (7 subcommittees)
- Appropriations (13 subcommittees)
- Armed Services (6 subcommittees)
- Banking, Housing, and Urban Affairs (8 subcommittees)
- Budget (no subcommittees)
- Commerce, Science, and Transportation (6 subcommittees)
- Energy and Natural Resources (5 subcommittees)
- Environment and Public Works (6 subcommittees)
- Finance (11 subcommittees)
- Foreign Relations (7 subcommittees)
- Government Affairs (7 subcommittees)
- Judiciary (7 subcommittees)
- Labor and Human Resources (7 subcommittees)
- Rules and Administration (no subcommittees)
- Veterans Affairs (no subcommittees)

**Total**—15 committees, 90 subcommittees

U.S. House of Representatives

- Agriculture (10 subcommittees)
- Appropriations (13 subcommittees)
- Armed Services (7 subcommittees)
- Banking, Finance, and Urban Affairs (9 subcommittees)
- Budget (9 subcommittees)
- District of Columbia (4 subcommittees)
- Education and Labor (8 subcommittees)
- Foreign Affairs (8 subcommittees)
- Government Operations (7 subcommittees)
- House Administration (8 subcommittees)
- Interior and Insular Affairs (7 subcommittees)
- Interstate and Foreign Commerce (6 subcommittees)
- Judiciary (7 subcommittees)
- Merchant Marine and Fisheries (5 subcommittees)
- Post Office and Civil Service (7 subcommittees)
- Public Works and Transportation (6 subcommittees)
- Rules (2 subcommittees)
- Science and Technology (7 subcommittees)
- Small Business (6 subcommittees)
- Standards of Official Conduct (no subcommittees)
- Veterans Affairs (5 subcommittees)
- Ways and Means (6 subcommittees)

**Total**—22 committees, 147 subcommittees

Table 4  
Standing  
Committees of  
the U.S.  
Senate and  
the U.S.  
House of  
Representa-  
tives, 96th  
Congress  
(1979-80)\*

\*This list does not include special and joint committees.  
Source: Compilations from: Michael Barone, Grant Ujifusa, and Douglas Matthews, *The Almanac of American Politics, 1980* (New York: E. P. Dutton, 1979).

---

the House makes coalition building more difficult because interest groups have more points of access to appeal the decisions of the majority.

Other points of access for interest groups are *ad hoc* groups, which are organized by members for some particular goal. Many of these groups are bipartisan, which further fragments the organization of Congress by providing a counterbalance not only to the regular committee structure, but also to the party leadership. Before 1965, only one such *ad hoc* group existed in the House—the Democratic Study Group. By 1979, the number had risen to almost 40, dedicated to a variety of interests, reflected by their titles, such as the Blue Collar Caucus, the Congressional Suburban Caucus, the Steel Caucus, and so forth.

Another complicating facet of House organization is the variation in workloads among the subcommittees. During the 95th Congress, for example the busiest subcommittee (the Energy and Power Subcommittee of the Interstate and Foreign Commerce Committee) was in session for 483 hours, while the least busy (the Printing Subcommittee of the House Administration Committee) met for only 2½ hours. Admittedly, these cases are extreme; most Representatives serve on a mixture of subcommittees with small workloads and those with large ones. However, the subcommittee workload is further complicated by variations in individual workloads. Although the average number of subcommittee assignments is 3.75 for House members, 188 Representatives have 5 or more. Still further complicating this problem are conflicting meeting times. Members are often assigned to meetings that are scheduled at the same time, resulting in a very low turnout for hearings. In addition, the House has not yet established regular meeting schedules for its committees.

Yet another major organizational problem is that of overlapping jurisdictions. The last major change in the jurisdictions of House committees was in 1946. Since then, major policy areas have developed that do not fit neatly into the existing structure. One response has been the creation of new subcommittees; another has been the practice of referral of bills to several committees. The total effect has been the spread of jurisdiction over certain policy areas among numerous Representatives and committees. For example, from January through May 1980, 617 energy bills were split among 19 House committees, while 1,806 health bills were split among 18 committees. So many committees had some jurisdiction over health and energy issues because the House has been unwilling to reorganize its committees along more functional lines.

The current organization of the House obviously makes coalition building more difficult. Members not only are burdened by the sheer size of their workloads, but also



---

are hampered by an organization that decentralizes responsibility and authority, as well as by scheduling traditions that make it impossible for members to meet all of their commitments. On the other hand, defenders of the present system point out that a multitude of committees and subcommittees provides access for interest groups that might not otherwise receive attention.

Concern about organizational problems is not new. Many members of Congress have been troubled about the haphazard committee structure, but all recent attempts at major reorganization in the House have failed, principally because of the opposition of subcommittee chairpersons. Chairpersons who would be affected by reform proposals have been able to garner sufficient support to defeat proposals. Since 1970, the House Democrats have turned down several opportunities to make significant changes to relieve overlapping jurisdictions, uneven workloads, and scheduling conflicts.

The last major reorganization of House committees resulted from the 1946 Legislative Reorganization Act. However, the structures and jurisdictions created by that act have been undermined by the increase in subcommittees. Because the 1946 act limited the number of standing committees, the response has been to increase subcommittees.

An attempt to simplify the committee structure was made in the House during 1973 and 1974. A select committee headed by Rep. Richard Bolling (D-Mo.) proposed consolidation of related subjects in committees, recommending substantial reorganization of House committees and subcommittees. The Bolling committee plan drew a great deal of opposition and was defeated by the Democratic caucus. As a compromise action, the caucus sent the plan to a special study committee—the Committee on Organization, Study, and Review, chaired by Rep. Julia Butler Hansen (D-Wash.)—which developed its own proposal. The Hansen plan, which was adopted by the caucus and later by the House, made a few jurisdictional changes, but primarily maintained the existing committee structure. In addition, it made no attempt to reduce the number of subcommittees or to reorganize committees by function.

In 1977, the Obey commission also recommended jurisdictional and procedural changes, including the appointment of an administrator to run House operations, a special committee to recommend changes in committee jurisdictions, as well as changes in the ethics rules. Although its recommendations on ethics were implemented, the proposals for the reorganization of committees were not passed. In 1979-80, a special House committee headed by Rep. Jerry M. Patterson (D-Calif.)

### *Previous Organizational Reforms*



---

recommended the consolidation of energy matters within one energy committee, but this proposal was defeated.

In contrast to the House, where organizational reform has been urged but rarely implemented, the Senate has made some significant changes. In 1977, a committee chaired by Senator Stevenson recommended the creation of the Energy and Natural Resources Committee. Acting on that proposal, the Senate removed energy jurisdiction from other committees and consolidated such issues in the new committee, which replaced the Interior and Insular Affairs Committee. The Senate also decreased the number of committees and subcommittees through consolidation. During 1971-79, the number of Senate standing subcommittees declined from 121 to 90.

Unlike the Senate, the House has continually been unwilling to make such major changes in committee jurisdiction. Ironically, the effectiveness of the formal structure is probably less important to the smooth functioning of the Senate than to the House. The Senate has always stressed equality among Senators—a tradition that downplays the importance of committees and committee leadership. In addition, the consequences of disorganization among 100 persons are much less severe than among 435 individuals, because forming majority coalitions in larger groups is much more difficult. Given this situation, particularly in the House of Representatives, the Panel presents several recommendations on committee reorganization, limitation of the number of subcommittees, and simplification of bill referral to committees.

**Both Houses of Congress should reorganize so that similar issues are handled within one committee. Reorganization should be structured so that committees reflect the functions that government serves.**

*Committee  
Reorganization*

Because of the current problem of fragmentation, particularly in the House of Representatives, a reorganization of committees by function could yield a more rational organization. One approach would be to parallel more closely the functional organization of the executive branch, thereby easing the task of oversight and the schedules of executive branch officials who spend so much time testifying before a variety of committees. Minimizing the number of overlapping committee jurisdictions could also lessen the conflicts that occur over jurisdiction, as well as facilitate coalition building.

The first step in reorganization in the House could be the establishment of committees for energy and for health issues because these areas are particularly fragmented

---

among a number of committees. The Patterson committee found that the greatest proportion of energy bills (only 27 percent) were referred to the Interstate and Foreign Commerce Committee; the remaining 73 percent of all energy bills were split among 18 other committees. With regard to health bills, the number of committees with some jurisdiction is almost as high. Again, the Interstate and Foreign Commerce Committee was in charge of most of the bills (45 percent), while the remaining 55 percent were referred to 17 other committees.

Reorganization, however, is no panacea for Congressional problems; committee reorganization by itself cannot guarantee that Congress will become a more effective lawmaking body. Some overlap in jurisdictions will always exist because of the complexity of the issues and because of the value in providing for a variety of viewpoints. But some degree of committee reorganization could facilitate coalition building by limiting the number of points at which legislation can be blocked. In other words, a higher quality of decisionmaking would be more likely to emerge from a reorganized structure. Under the current organization, controversial legislation is almost impossible to handle in the standing committee structure; simply too many individuals can claim jurisdiction over such proposals.

**The total number of subcommittees should be limited, and the number of subcommittees on which members serve should be decreased.**

*Subcommittee Reform*

Besides simplifying committee jurisdictions, reorganization of the committee system should emphasize a smaller number of subcommittees, as well as a more manageable workload for individual members. Such reductions should be performed cautiously to ensure that “iron triangles” become weaker, not stronger. The major focus in subcommittee reductions should be toward limiting legislative subcommittees, rather than those with oversight duties. Although the distinction between the two is often blurred, oversight subcommittees in general review and evaluate the operations of existing federal agencies and programs, while legislative subcommittees write bills as well. The oversight subcommittees also may overlap, but the major criticism of Congressional oversight generally is that too little, rather than too much, oversight is practiced.

Critics of subcommittee reduction argue that the current system enables a variety of viewpoints to be heard because multiple points of access are available. Decreasing the number of subcommittees might mean less effective representation of diverse views. Another threat is that iron



---

triangles could be strengthened if fewer subcommittees and fewer members were involved in each policy decision. On balance, however, the Panel believes that such subgovernments are probably encouraged more by the present system; numerous subcommittees provide more opportunities to block legislation.

Members of the House of Representatives should also be limited to service on three or four subcommittees. This measure not only would make the workload more equitable, but also would enable members to concentrate more effectively on each subcommittee assignment. A smaller number of assignments for Representatives could also lead to better oversight because more time would become available for the work of each subcommittee.

**Particularly in the absence of committee reorganization, the House of Representatives should modify the current multiple referral procedure, so as to simplify the referral system.**

*Simplification  
of the Bill  
Referral  
System<sup>2</sup>*

The manner by which bills are referred to committees has concerned many observers of the House. The Bolling/Hansen reforms of 1973-74 were originally intended to give the Speaker of the House more discretion over which committee should handle legislation. The reforms gave the Speaker the authority to refer bills to more than one committee at the same time or to several committees in sequence, or to split up bills, sending parts to separate committees.

Recently, some observers have attacked these reforms, arguing that the multiple referral process encourages conflicts among committees. The Patterson committee noted that the process was designed to be used when jurisdictional overlaps among committees occurred, but in fact it has also created over 10,000 conflicts among committees during the past Congress. Indeed, the multiple referral option has been used by committee chairpersons to justify appeals to the Speaker, who can refer bills to several committees. For example, the Health Services Act of 1979 was referred to nine standing committees simultaneously.

One consequence of increasing joint referrals has been a slowdown in the legislative process; more participants are brought into the policymaking arena, creating more places for vetoing or slowing down legislation. The Patterson committee found that approximately four times as much meeting and hearing time is spent on such bills and that jointly referred measures are less likely to be reported out of committee or to pass the House. Although such bills are probably more complex than average bills, it is doubtful that their complexity justifies four times more effort for less gain.



---

Another result of multiple referral is the encouragement of competition among committees over the jurisdiction of controversial legislation. In addition, this procedure has provided another strategy for pressure groups; they have more opportunities to persuade sympathetic chairpersons to stall or kill legislation.

Some jurisdictional overlap among committees will always exist, no matter how well they are organized. The perfect committee structure does not exist. In addition, in special cases it may be necessary to refer bills to several committees concurrently. However, greater discretion should be used, reserving such referrals for extraordinary cases and pressing the involved committees to justify such joint referrals. Additionally, the referral rules should be modified so that stalling important legislation is made more difficult.

For all these reasons, the House should modify its referral rules to encourage timely decisionmaking. One approach could be the designation of a principal committee for a jointly referred bill; all other involved committees would report to this single committee. Another possible modification would be to set time limits on the consideration of all jointly referred bills. Although time limits are always imposed on bills referred sequentially to committees, such constraints are usually not placed on committees jointly (simultaneously) involved in consideration of bills. In addition, because all bills must pass through the Rules Committee of the House before receiving a floor vote, and because the Rules Committee will not release a bill unless all involved committees have reported on such legislation, each committee has the capacity to stall a jointly referred bill. Setting time limits for each committee's consideration could ensure more timely decisionmaking on such bills.

While fragmentation of authority among committees and subcommittees has proven to be a major impediment to the coalition-building process in Congress, another recent phenomenon has created barriers to timely decisionmaking—the excessive individualism of members of Congress in recent years. Therefore, besides substantial committee reorganization, strengthening the party leadership is another necessary prerequisite for more effective policymaking, particularly in the House of Representatives.

Party leadership includes both formal positions and party committees. The formal party leadership positions in the Senate are the Vice President (who acts as the Presiding Officer), the President *pro tempore*, the majority and minority leaders, and the majority and minority whips. In the House of Representatives, the formal positions are the

## **Strengthening the Role of the Parties**

---

Speaker of the House (the leader of the majority party), the majority and minority leaders, and the majority and minority whips (see Figure 2). In addition, each party has several assistant whips.

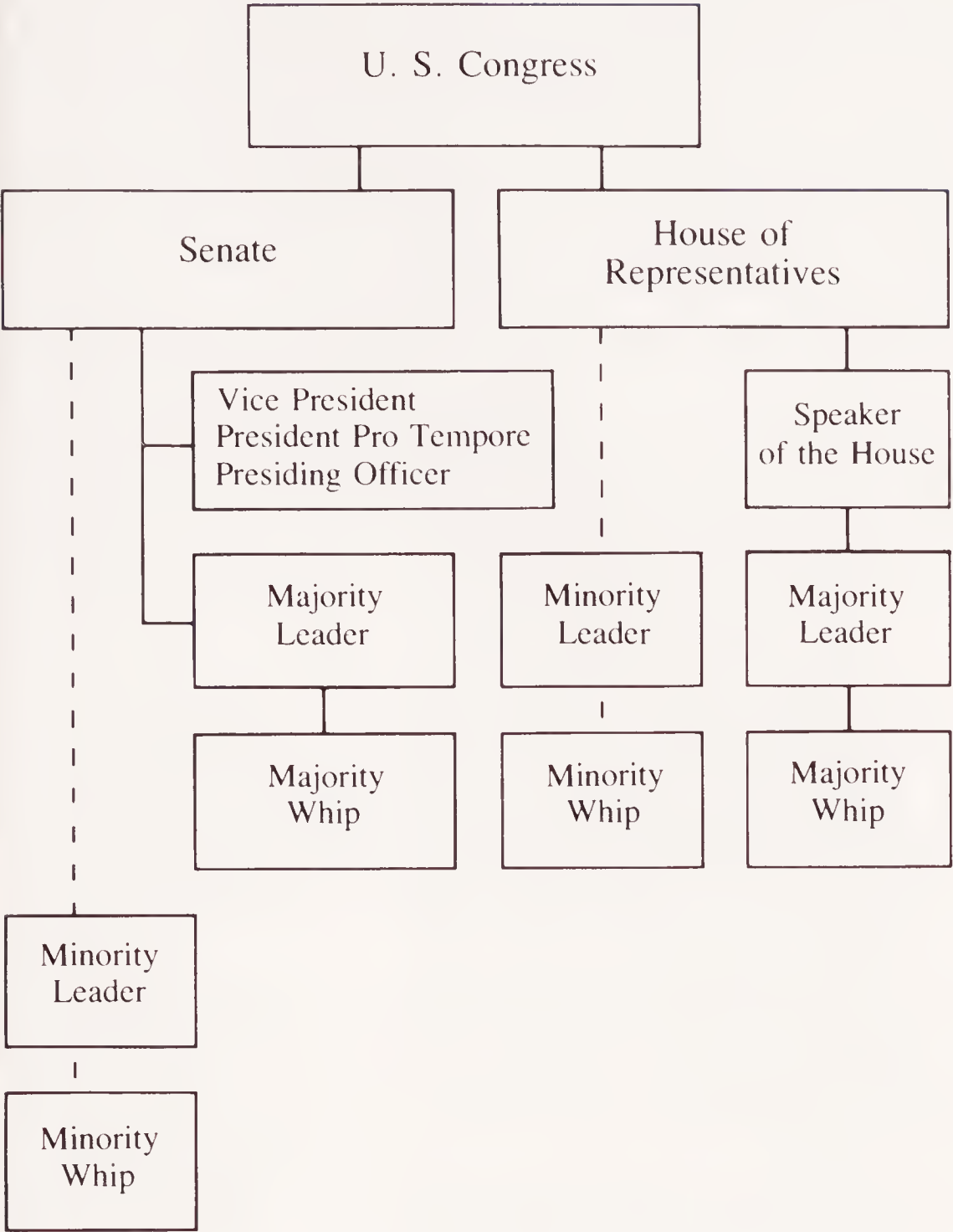
The party committees with leadership powers include the Steering and Policy Committee of the House Democrats, which nominates committee chairpersons, assigns Democratic Representatives to committees, and works with the party leadership to provide policy direction. The Policy Committee of the House Republicans performs the same functions, although it makes no committee chairperson assignments because they do not hold the majority. In addition, each party has a caucus of all party members in each house of Congress.

In discussing the need for a stronger party system in Congress, it is important to remember that the Republicans have not held a majority of both houses since 1955. Most of the common wisdom about party leadership is necessarily based on the experiences of the House and Senate Democrats. Although no one can predict which party will hold the majority during the coming decade, the problems that have plagued the Democrats in building decisionmaking majorities in their party will probably also provide challenges to the unity of the Republican party in Congress.

An additional problem in creating majorities in Congress will be the divided control of Congress, at least during the 97th Congress in 1981-82. Not since 1935 have the House and Senate been controlled by different parties. Although the nation has had some experience with divided control between Congress and the President—during 1947-48 of President Harry S. Truman's first term, during all but the first 2 years of the Eisenhower Presidency, and throughout the entire Nixon and Ford Administrations—the effect of a divided Congress on the relations between Congress and the executive branch is difficult to calculate. Undoubtedly, the conference committees (which are made up of both House and Senate members who negotiate compromise bills when the House and Senate versions differ) will be greatly burdened during the coming Congress.

The traditional importance of party leaders differs between the two Houses. The procedural rules of the Senate, such as the right to unlimited debate, give great authority to the individual Senator. Consequently, a strengthening of the party caucuses in the Senate seems not feasible because each Senator has the ability to obstruct the instructions of a party caucus. For example, if a majority leader attempts to discipline a Senator, such control can be countered by filibustering and other behavior that seriously obstructs the conduct of Senate business.

**Figure 2**  
**Congressional Leadership**





---

The committee assignment process in the Senate also gives a great deal of independence to the individual Senator. Because the Senate Democrats have not yet followed the example of the House in requiring an automatic secret ballot review of committee chairpersons by the caucus, a Senator is now highly unlikely to lose a chair position; few junior Senators may be willing to risk the wrath of more powerful and senior party leaders by openly voting against them. Therefore, it is not surprising that Senate chairpersons tend to act independently of their party leaders, because the Democrats have never attempted to control them through their caucus. Of course, the Republicans may follow the same tradition of granting their chairpersons substantial independence from the caucus.

In the House of Representatives, the possibilities of strengthened party leadership are much greater. Individual members are granted less authority and flexibility by the procedural rules, and thus are less able to defy the caucus. Also, the party caucuses traditionally play a more important role in the House than in the Senate. For example, the House Republican caucus has occasionally exercised its power by deposing a party leader—a fate suffered by minority leader Joseph Martin, Jr. (R-Mass.) in 1959 and by minority leader Charles Halleck (R-Ind.) in 1965. The Democratic caucus increasingly used its power in the early 1970s, deposing several committee chairpersons in November 1974—Rep. F. Edward Hebert (D-La.) from the Armed Services Committee, Rep. Wright Patman (D-Tex.) from the Banking and Currency Committee, and Rep. W. R. Poage (D-Tex.) from the Agriculture Committee. The Democratic caucus also exerted its power in 1975 by enforcing its position to repeal the oil depletion allowance for large oil companies.

The House Democrats have already taken some steps to enhance party leadership. During the 1970s, the powers of the Speaker of the House were increased by giving this position the chair of the party's Steering and Policy Committee and the power to nominate eight of its members. This committee also includes the majority leader, the majority whip, the chair of the Democratic caucus, and 12 elected members. The Speaker was also given the authority to nominate all Democratic members of the Rules Committee (which controls the flow of legislation to the floor and determines the conditions under which bills are debated), ensuring that members of this key committee are responsive to him. The Speaker was also given more discretion over the referral of bills to committees so that he could avoid sending important bills to hostile committees.

Unfortunately, the party committees and the Speaker have been unwilling to impose stern discipline over the

---

Democrats. A few cases of subcommittee chairpersons losing their chairs have occurred, but these cases are rare. The Democratic Steering and Policy Committee has also been unwilling to discipline errant members by removing them from their assigned committees. Although the role of the Speaker, the key party committees, and the caucus should be strengthened, the various leaders also should be encouraged to exercise their present authority.

One objection that is often raised about proposals to increase the power of party leaders is that their accountability to rank and file members might decline. However, a safeguard against the misuse of power exists in the party caucuses. In the final analysis, the Speaker and other leaders are accountable to the caucus, because party leaders are elected at the start of every session by party members. Although the Speaker is elected by the entire House, the voting tends to fall along strict party lines. In addition, the caucus can set the general limits for action by the leaders, who then can have wide authority for acting within such limits.

**Particularly in the absence of committee reorganization, experimentation should continue with *ad hoc* committees and similar mechanisms for ensuring the responsiveness of committees and subcommittees to party leadership.**

*Experimentation with  
Ad Hoc  
Committees*

House Speaker O'Neill (D-Mass.) has used an innovative approach to circumvent the unwieldy committee structure. Twice he has used the technique of establishing *ad hoc* (special) committees, such as those on the outer continental shelf and on energy. The Speaker also created a special welfare subcommittee in 1977. These committees can be established only for a limited period of time, and they are usually created when proposed legislation covers the jurisdictions of several committees and when there is a pressing need for that legislation. In the absence of a Congressional reorganization, the continued use of *ad hoc* committees may be necessary. Such appointments enabled the Speaker to detour unrepresentative or unresponsive committees by appointing members who are more favorable to his point of view.

*Ad hoc* committees have been criticized on the grounds that they are politically not feasible; an enormous amount of political capital and time are required to set up such mechanisms outside the regular committee system. Some may view this sort of experimentation as a further complication of the committee system. Until that system is reorganized, however, the search should continue for ways



---

to deal with issues that cut across the jurisdictions of many committees, and that are so controversial they induce the involvement of a variety of interest groups.

**The party leaders, caucuses, and the House Steering and Policy Committee should use their authority to ensure the responsiveness of members to their party.**

*Use of  
Current  
Authority*

For both parties in the House, the party leaders, the party committees, and the caucuses have substantial authority to discipline members through the committee assignment process. However, because the Democratic party has been the majority party for the past three decades, the following discussion revolves around its party leadership mechanisms.

The party leaders and the Steering and Policy Committee have the formal authority to discipline House Democrats—both chairpersons and rank and file members. For example, the Steering and Policy Committee has the power to discipline individual party members for serious breaches of party loyalty by removing them from committees or stripping them of their seniority. In practice, however, such measures have seldom been used. In fact, once Representatives are assigned to a committee, they usually leave only voluntarily. The House Democratic caucus should examine the possibilities for using such measures to discipline members who are unresponsive to the needs of the leadership and to the demands of their party.

These party organs can also discipline committee and subcommittee chairpersons by refusing to recommend approval of their appointments by the caucus, which has occurred from time to time. Although the Steering and Policy Committee and the caucus have turned down several nominations, in general, chairpersons are approved as a matter of course. The House Democratic caucus should continue to remove chairpersons who are consistently unresponsive to the party leaders. The caucus should also examine the merits of electing by automatic secret ballot all subcommittee chairpersons. At present, all committee chairpersons and the chairpersons of all appropriations subcommittees are elected this way. The automatic secret ballot is important because it allows less senior members to vote against chairpersons without fear of reprisal if the vote against them fails.

Neither Senate Democrats nor Republicans have given much authority to their leaders or to the caucus for disciplining members. Of course, whether or not the Senate Republicans follow the same tradition is unknown, but both party caucuses in the Senate should investigate the



---

merits of holding committee and perhaps subcommittee chairpersons up to review by automatic secret ballot.

Obviously, such measures require a recognition by a majority in the House and Senate that the party leadership needs to be strengthened. It will also require that the party leaders use their existing authority to make the members more accountable to their leadership. Particularly in the absence of substantial committee reorganization, such measures are necessary to ensure the accountability of committees and subcommittees to party leaders and to increase the brokering capacity of those leaders.

A final consequence of haphazard Congressional organization is that Congress has experienced difficulty in exercising effective oversight of the executive branch. Serious attention should be paid to oversight and budgeting, because inadequate procedures in these areas can discourage the accountability of the executive branch to Congress. Lax procedures can also encourage the formation of iron triangles.

Recently, interest in oversight has increased greatly among members of Congress. In fact, oversight was cited as the second most important task of Congress (legislation was first) by members responding to a questionnaire of the Obey commission. Indeed, Congress has made significant improvements in its capacity to exercise oversight by increasing staffs and support agencies. For example, Congressional staffs increased by 41 percent from 1972 to 1978, and over 1,800 people now work for House committees alone. The major justification for most staff increases was to enhance effective oversight of executive branch agencies and to evaluate the President's budget more thoroughly.

The various support agencies of Congress were also strengthened during the 1970s. The Congressional Research Service of the Library of Congress was strengthened by the Legislative Reorganization Act of 1970 to provide better evaluation of legislative proposals for Congressional committees. Congress also created the Office of Technology Assessment in 1972 to help Congressional committees evaluate the consequences of technologies. The General Accounting Office (GAO), which provides Congress with independent analyses of executive agency expenditures, was strengthened in 1974. Indeed, the remarkably increased effectiveness of GAO has even led some observers to contend that oversight is accomplished more naturally and efficiently through such a support agency than directly by Congressional committees. Finally, the Congressional Budget Office was established in 1974 to provide Congress with the expertise to analyze the President's budget.

## **Congressional Oversight of the Executive Branch**

---

This increased number of subcommittees, staffs, and support agencies has resulted in better oversight, but disagreement still arises over whether or not it is sufficiently systematic. The quality of oversight may not be improved because staff members—who often do most of the work—do not have the same political power that members of Congress hold. Some observers also believe that the expansion of committee and personal staffs may make the jobs of executive branch officials unnecessarily difficult. They spend more time not only testifying, but also answering the requests of more people.

One of the most basic barriers to more thorough Congressional oversight is that given the limited time available to members, few rewards are forthcoming for the drudgery of oversight duties. Attention to oversight is not widely believed to help in the reelection process, to bring prestige, or to facilitate dramatic changes in public policy. Oversight is not usually newsworthy and requires an attention to detail and patience. It is probably the most thankless task of members of Congress.

However, widespread recognition that oversight by Congress should be conducted more effectively, and widespread fear that slipshod oversight encourages the unaccountability of executive agencies, has increased. About 75 percent of the members surveyed by the Patterson committee in 1979 answered “no” to the question: “In general do you believe that House committees are doing an adequate job of oversight?” Little agreement has been reached, however, about preferable strategies for oversight. Basic questions such as whether oversight should be centralized in a single oversight subcommittee, or whether each subcommittee should perform its own oversight, have not been resolved. In addition, not much agreement has been reached over where coordination of oversight activities among the various committees should take place—in the House and Senate Government Operations Committees, in the House Administration Committee, or through the party leadership of the houses.

**Both the House of Representatives and the Senate should be encouraged to experiment with different mechanisms for ensuring higher quality oversight. Specifically, Congress should examine the feasibility of mandating oversight at regular intervals by its committees.**

*Oversight  
Mechanisms*

It is important for both houses to recognize that implementation of oversight is probably one of the most complex Congressional functions. Effective oversight requires time-consuming attention to detail, and Congressional



---

committees and individual members often do not have enough time. Both the House and the Senate should continue to experiment with means for limiting the redundancies and gaps in oversight that inevitably occur as a result of overlapping jurisdictions in committees. Some executive branch officials spend enormous amounts of time testifying before authorization, appropriation, and budget committees, as well as before several separate subcommittees for oversight. Both houses should ensure not only that some agencies are not ignored, but also that other agencies are not overly monitored. Regular mandated oversight could help committees to avoid these extremes.

Finally, both houses should experiment with means for coordinating oversight, particularly in the absence of substantial committee reorganization in the House. Currently, the Government Operations Committee is supposed to perform this coordinating function for the House, but members agree that the committee cannot perform the function thoroughly, although they disagree about the remedy. One possibility for better coordination might be the creation of an oversight priority schedule by each party; the party leaders could decide which agencies and programs are most in need of oversight. Coupling this priority-setting procedure with a special oversight period for committees could ensure that each pressing oversight task is performed.

The Budget Control and Impoundment Act of 1974 resulted from President Richard M. Nixon's action of impounding funds that had been appropriated by Congress. The act ruled out future impoundments. More importantly, however, that act also established the Budget Committee process in the Congress and created the Congressional Budget Office.

The budget can be used as an indirect tool to oversee the accountability of the executive branch. Such use of the budget is not new; Congress has often threatened to withhold funds when it suspected that an executive agency was insufficiently attentive to the Congressional will. Before the 1974 act, virtually no mechanism was available for ensuring that appropriations decisions were consistent with revenue decisions, and no guidelines were outlined for the use of authorizing committees in recommending funding levels for agencies. The creation of the Budget Committees in the House and the Senate, and the creation of the Congressional Budget Office, were the first steps toward giving Congress the means to control the budget.

It is still too early to evaluate how well the Budget Committees are working, but most members of Congress seem to believe that the process is worth retaining and

### *The Budget Process*



---

strengthening. The recent adoption of new reconciliation procedures has placed on authorizing committees the necessity of meeting the limits set by the Budget Committee, and the House recently took steps to strengthen its Budget Committee by lengthening the terms of members serving on the committee.

**Authorization and Appropriations Reforms.** The major objection to the budget process is that most federal agencies are still subject to annual appropriations. For decades, analysts of both the executive branch and Congress have recommended the use of multiyear appropriations, on a biennial or triennial basis. **Accordingly, the Panel recommends that Congress should move toward a multiyear authorization and appropriations cycle.**

The disadvantages of an annual cycle are numerous. Agencies have difficulty in engaging in long-range program planning, because of uncertainty about future levels of funding. Annual appropriations also make evaluation of programs difficult because the goals of so many programs can only be achieved over a sustained period of time. Annual appropriations also entail a misuse of both executive and Congressional time and resources. Agency heads spend too much time testifying before Congressional committees, and their staffs spend too much time preparing testimony. For the members, their scarce time could be better used if the appropriations of agencies were confined to more thorough procedures every 2 years, rather than less rigorous annual reviews.

In fairness to the current procedures of Congress, serious objections to multiyear appropriations have been raised. Many observers believe that the annual process makes agencies more accountable to the Congressional will. Another argument is that the inflation rate makes long-range appropriations not feasible, because predicting the future costs of agencies is too difficult. On balance, however, the Panel believes that the disadvantages of the current process are more telling, and that Congress should take steps toward a multiyear cycle.

---

## Notes

1. This section is based on: U.S. House of Representatives, *Final Report of the Select Committee on Committees* (report of the Patterson Committee), H. Rept. No. 96-866, 96th Congress, Second Session (Washington, D.C.: U.S. Government Printing Office, April 1, 1980).
2. Material in this section is based on: Walter J. Oleszek, "Multiple Referral of Legislation in the House," paper presented at the 1980 Annual Meeting of the American Political Science Association, Washington, D.C., August 28-31, 1980.

## References

- Davidson, Roger H. and Oleszek, Walter J. *Congress Against Itself*. Bloomington, Ind.: University of Indiana Press, 1977.
- Fenno, Richard F., Jr. *Congressmen in Committees*. Boston: Little, Brown and Co., 1973.
- Fenno, Richard F., Jr. *Home Style: House Members in Their Districts*. Boston: Little, Brown and Co., 1978.
- League of Women Voters of the Fairfax, Va., Area. "Report Card on Congress." Mimeo, 1980.
- Ogul, Morris S. "Congressional Oversight: Structures and Incentives," in *Congress Reconsidered*, Lawrence C. Dodd and Bruce I. Oppenheimer, eds. New York: Praeger Publishers, 1977, pp. 207-221.
- Oleszek, Walter J. "Multiple Referral of Legislation in the House," paper presented at the 1980 Annual Meeting of the American Political Science Association, Washington, D.C., August 28-31, 1980.
- Patterson, Samuel C. "The Semi-Sovereign Congress," in *The New American Political System*. Anthony King, ed. Washington, D.C.: The American Enterprise Institute, 1978, pp. 125-177.
- Price, David. *Who Makes the Laws?* Cambridge, Mass.: Schenkman/General Learning Press, 1972.
- U.S. House of Representatives, Commission on Administrative Review. *Final Report of the Commission on Administration Review* (report of the Obey Commission), H. Doc. 95-272. 95th Congress, First Session. Washington, D.C.: U.S. Government Printing Office, December 31, 1977.
- U.S. House of Representatives. *Final Report of the Select Committee on Committees* (report of the Patterson Committee), H. Rept. No. 96-866. 96th Congress, Second Session. Washington, D.C.: U.S. Government Printing Office, April 1, 1980.
- U.S. House of Representatives, Select Committee on Committees. *Committee Reform Amendments of 1974* (report of the Bolling Committee), H. Rept. 93-916. 93rd Congress, Second Session. Washington, D.C.: U.S. Government Printing Office, March 21, 1974.
- Uslaner, Eric M. "A Government as Good as Its People: Or, Do We Really Want Farmer Jones to Be the Next Speaker?" in *Points of View*. Robert E. DiClerico and Allan S. Hammock, eds. Reading, Mass.: Addison-Wesley, 1980, pp. 153-160.





---

## Chapter 4

# THE Presidency AND THE Executive Branch

**A**ccording to current trends, during the 1980s difficult policy decisions will have to be made concerning national security, inflation, unemployment, economic productivity, environmental protection, energy supplies, civil rights, and many other important issues. Although Congress participates in policy setting, implementation of policy decisions remains the responsibility of the President and the executive branch. In addition, if the federal government is to be truly effective, then the executive branch needs to be effective. Appropriate organization, motivated personnel, and thoughtful leadership of the executive branch are essential to our national welfare.

Even as an effectively functioning executive branch has become more important, an overtly critical attitude toward Washington has developed. Open season has been declared on the “bureaucrats.” Journalists, businessmen, cartoonists, and public speakers of every type lose few opportunities to take potshots at the bureaucrats—especially those of the federal government. Certainly, federal officials have sometimes abused their positions by becoming too rigid or overzealous in their application of the law. However, public discussion of the federal executive branch has become out of balance.

Clear thinking about the executive branch has been difficult because of the American public’s tendency to remain suspicious of governmental power, particularly central governmental power. Professor Louis Hartz of Harvard developed a convincing interpretation of American political history employing this concept in *The Liberal Tradition in America* (wherein “liberal” means something akin to “libertarian” in contemporary terms). Hartz argued that since the 18th century, most Americans have valued individualism and decentralized political structures over political concepts that emphasize tradition, community, centralization, or class unity. Although economic and abolitionist motives may account for the Civil War, this conflict was also a violent struggle over the power of the federal government to overrule state governments in public policy concerning slavery.

---

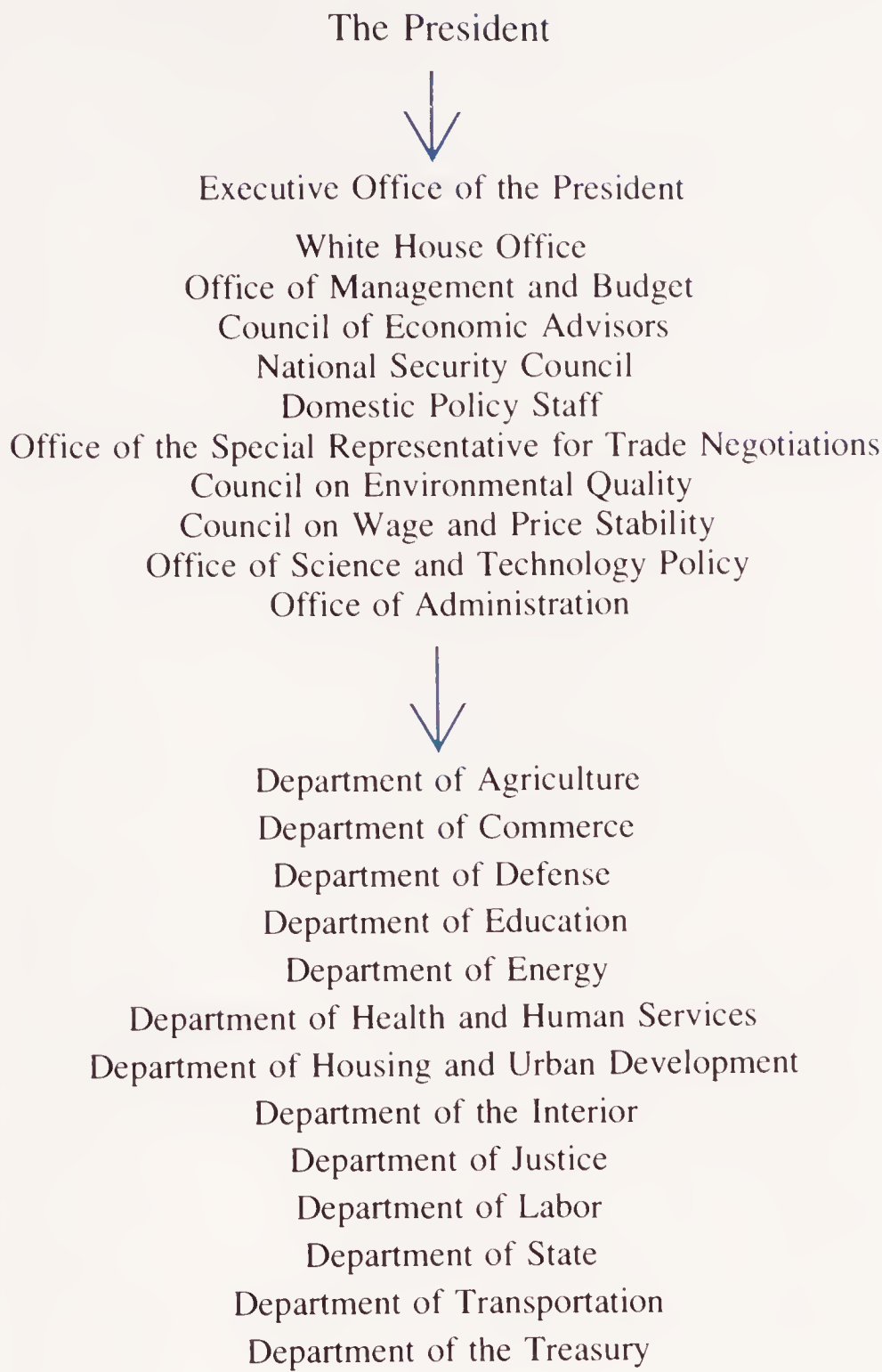
Hartz's theory also helps to clarify why such pervasive criticism of federal bureaucracy has arisen during the past 15 years, even though state and local bureaucracies were expanding much faster. A number of other factors reinforced this "critical" attitude toward the central government in America—the conduct of an unpopular war in Vietnam, the conspicuous failures within the War on Poverty programs, the Watergate scandal, and the regulatory activity in the policy areas of environmental, occupational health and safety, and consumer protection. The American suspicion of federal government activities has now deepened into a suspicion of the competence and integrity of the bureaucrats who manage and coordinate the activities of the executive branch in Washington.

Consequently, as the United States moves into the 1980s, a difficult situation has developed. On the one hand, the citizenry is calling for active leadership from the President and the executive branch to deal with pressing nationwide problems. On the other hand, criticism of the federal bureaucracy has reached new heights, making it increasingly difficult for executive branch officials to garner sufficient support for new management and reorganization efforts. An important task for the coming decade will be to balance this situation.

In the past, Americans have stood in the forefront of those initiating new modes of popular rule. A challenge for the 1980s will be to apply that American innovative talent to the executive branch of the federal government for the purpose of making it more efficient, effective, innovative, and accountable. The President, the Congress, and the interested public will need to bring forth new ideas for improving the performance of the federal executive branch. As part of this process, criticism of federal bureaucracy should become more thoughtful and selective. Discussions should begin to focus on how to better manage, organize, and staff the executive branch. (See Figure 3 for information on the organization of the executive branch of our national government.)

In this spirit, the Panel on the Electoral and Democratic Process presents in this chapter many recommendations for more effective management, staffing, and organization of the federal bureaucracy. An important caveat should be noted. Skilled leadership, good personnel, and effective organization are all necessary but individually insufficient conditions for an effective executive branch. In other words, reorganization cannot solve our bureaucratic problems, unless good people and management tools are available to implement the reforms; good personnel can be greatly hindered by poor management practices and organizational forms; and effective leadership and management is needed to posit the goals for the personnel working within a given organizational structure. All three factors are required for an effective executive branch.

**Figure 3**  
**The Executive Branch\***



\*This figure does not show the independent federal agencies and government corporations.



The President is the central figure in national coalition building because he continuously receives public attention and closely works with the nation's public and private leaders. By a judicious use of the "bully pulpit," he can increase public awareness of current problems and priorities and convince the citizenry of the appropriateness of his views and actions.

The President is also a key figure in building coalitions among American leaders. Using brokering, negotiating, and leadership skills, Presidential meetings with a variety of leaders in the private sector—business, labor and voluntary groups—can often result in agreements among them. In addition, thoughtful use of his leadership abilities can lead to effective coalitions with Congressional and departmental leaders.

Yet, skilled Presidential leadership alone is insufficient for appropriate and fruitful management of the executive branch. Leadership from top federal executives and improved management tools are also required. In this light, discussions follow on the interactions among the President, the White House staff, and the cabinet; the need for new institutions for and approaches to other management staff functions, such as long-range analysis, recruitment of executive personnel, and management assistance; and the need for cooperation between the President and Congress.

A perennial problem for the post-Hoover Presidency has been a blurring of the lines of authority, and the consequent competition and jockeying for power, between officials of the President's own office (known as "the White House staff") and the cabinet of Secretaries from the departments of the executive branch. For example, in recent administrations, a well known, recurring conflict has erupted between the Secretary of State and the Assistant to the President for National Security Affairs.

One reason for such tension between the President's men and cabinet Secretaries has been the criteria used to choose them, which in turn affects the roles they play. The major criterion used in the selection of cabinet officers has always been political—the need to mollify political factions by selecting people to head departments that are congenial to them. For instance, the Secretary of Labor is usually someone acceptable to the leaders of organized labor, the Secretary of Commerce often comes from and reflects the views of the business community, the Secretary of Housing and Urban Development is ordinarily receptive to the problems of big city mayors, and so forth.

The criteria used for selecting cabinet officers—support from important political constituencies, expertise within a professional field, experience in government—are not ordinarily used in the selection of high-ranking White

*The Cabinet  
and the  
White House  
Staff*

---

House staff. Presidents traditionally have tried to please only themselves in their choice of White House senior personnel and advisers. High-ranking staffers have typically been associated with the President prior to his election and their relationship is usually characterized by mutual trust built over a number of years together.

One result of such different selection criteria are differing constituencies. Although the White House staff has only one constituent in the President, cabinet officers, by virtue of their positions, have ties to particular interest groups whose views require consideration in addition to those of the President. In a sense, cabinet officers can be pulled in two directions, which sometimes have opposing policy positions. For example, some cabinet officers may view themselves as representatives of a single constituency—business, labor, the military, and so forth. These Secretaries usually discover that they are more closely allied with certain members of Congress and interest groups served by their departments than with the President and his staff. On the other hand, Secretaries who identify more strongly with the President than with any interest group may concentrate on the needs of the administration rather than their particular departments, which risks alienating their constituencies.

Another ramification of the criteria used in the selection of department Secretaries is that the cabinet as a whole cannot always be effectively used as an advisory group. It does not fully reflect the Presidential perspective, but communicates the separate and particular views on national topics of various departments and interest groups.

Another reason for increased conflict between the White House staff and department heads and personnel is the existence of “iron triangles”—coalitions of leaders of federal agencies, Congressional committees, and interest groups to pursue policies for special interest goals. Again, the criterion of appointing cabinet officers with special interest ties helps to account for these “subgovernments.” The negative result is that the President may come to rely more heavily on his own staff loyalists in decisionmaking, rather than on negotiating with his cabinet. In turn, Secretaries may turn to their allies in Congress and among interest groups because they do not have the attention of the President and his staff. Such situations do not have positive implications for Presidential coalition building with cabinet officers.

Another consequence of cabinet-White House conflict is a generally low morale and high turnover among department Secretaries. Part of this problem may result from the tension of serving both the President and specific constituencies, but an additional factor may arise from their often less than cordial relationship with some high-ranking White House staff persons. As an example of high turnover,



---

all but one of President Richard M. Nixon's first cabinet Secretaries had left office by the time of his second inauguration. Indeed, the average tenure of Secretaries is much shorter than the 4-year Presidential term. Knowledge of this problem of high turnover and low morale may also make it more difficult for Presidents to recruit their first choices for department Secretaries.

Yet another outcome is the growth in importance of the White House staff as reflected by the sharp increase in its size. Although President Franklin D. Roosevelt greatly increased his staff over his predecessor's (to 45 in 1938), it was still very small compared to modern sizes (540 persons in 1975). Such large staffs pose a problem because increased size makes accountability more difficult. Increasingly, critics argue that Presidents have responded to the growth of bureaucracies by the creation of yet another bureaucracy within the White House.

A final implication of the White House-cabinet relationship is a management problem—more routine policy decisions seem to end up in the White house than before. The White House staff does not usually have the substantive expertise and experience to warrant a large role in policymaking; therefore, some areas of policy may be neglected or even mishandled by them. The cabinet officers usually have broader experience in their particular fields and in the management of their programs. In addition, policymaking at the White House staff level can result in some agencies complaining of interference, while others suffer from inattention.

Some conflicts might be mitigated if it were generally understood that cabinet officers and Presidential staff should perform different functions in an administration. The cabinet officers should be considered as specialists, concerned with running their departments and implementing Presidential priorities within their own substantive areas. The President's advisers, on the other hand, have a generalist role—ensuring that broad cross-cabinet or national issues are decided at the Presidential level. Although White House advisers should inform the President when departmental issues require his decision, they should not be involved in the day-to-day running of departments. Conversely, although departmental issues should be settled by the Secretaries within their respective agencies, these officers should not be expected to develop broader national policy.

Based on this understanding of the conflicts between the roles of the cabinet and White House advisers, the Panel recommends that: **Three policy coordination staffs should be created within the Executive Office of the President for economic affairs, domestic affairs, and international affairs, each headed by an assistant to the President.**<sup>1</sup>

*Policy  
Coordination  
Staffs*



---

This proposal is designed to address several criticisms of the policymaking roles of Presidential advisers, as well as to alleviate some of the potential for continued conflict between the White House staff and the cabinet. Accordingly, the proposal reaffirms the policymaking role of the President and his cabinet, but also ensures that Presidential advisers are used to facilitate policymaking, but not to make policy.

Recognizing that federal agencies can become captured by outside interest groups, and therefore that the President often needs independent sources of information and analysis, these new Presidential advisers and their staffs could help the President manage the flow of information and decisions. Advisers' roles should be kept flexible, allowing them to act as troubleshooters for the President and as critics of the departmental programs and functions, to provide analysis independent of affected agencies, and to inform the President of problems in the implementation of policy. Such advisers could also serve as a link between the President and the executive agencies, communicating Presidential priorities and ensuring the implementation of Presidential decisions. Finally, these advisers could be used as brokers among agencies to ensure that Presidential priorities are followed, particularly in cases of overlapping jurisdictions.

Use of advisers as independent policymakers should be avoided, however. If they rival department Secretaries in the formulation and advocacy of public policies, the Presidency may be ill served. Presidential advisers who become public spokesmen for the administration and public advocates of particular policies can undermine the effectiveness of cabinet officers, leading to conflicts over turf, to lowered agency morale, and to harmful divisiveness. Other possible consequences include diminished performance of the more neutral troubleshooter role and reduced effectiveness of brokering among agencies. In addition, if such advisers have fixed policymaking assignments in direct competition with cabinet officers, the resulting overlapping authority might create confusion in the minds of both the public and the leaders of other countries over the direction of administration policy. Therefore, such advisers should remain out of the limelight, coordinating the policy work of departments within their purview, while paying close attention to the President's needs for broad national policy.

Under this proposal, the staff of the National Security Council (a coordinating committee that includes the President, the Vice President, the Secretaries of State and of Defense, the Director of the Central Intelligence Agency, and the Chairman of the Joint Chiefs of Staff) would be moved another step away from the President. A new International Affairs Staff would be created to serve as the policy broker with and the coordinator of information coming from the State Department, the Defense Department, the

---

National Security Council, the Central Intelligence Agency, and so forth. This reorganization emphasizes that the director's role of the International Affairs Staff would be one of policy coordinator, not one of policy formulator and public advocate.

Another recommendation is that the Domestic Policy Staff in the White House be split in two, creating a Domestic Affairs Staff and an Economic Affairs Staff. The Domestic Affairs Staff would channel all policies, issues, and advice concerning domestic affairs. Two major reasons exist for an Economic Affairs Staff. First, this critically important area overlaps both domestic and international policy. Because economic events on domestic and international levels are closely linked, they are best considered together under one organizational unit. Second, the President now receives economic advice from a number of sources—the Council of Economic Advisers (CEA), the Federal Reserve Board, the Secretary of the Treasury, the Council on Wage and Price Stability, the State Department (international economics), and others. One staff in the White House to coordinate the proposals and messages from all of these sources would be most useful. However, the Panel recommends that the Council of Economic Advisers and its staff be retained. While the CEA conducts valuable economic research for the President, the proposed Economic Affairs Staff would coordinate the flow of information about economics.

Each of the three new staffs should be kept small (approximately 20 professional members each), and the hiring emphasis should be on experienced professionals in the appropriate policy areas. In addition, there should also be an emphasis on staff continuity to ensure greater expertise among them.

Finally, this White House staff reorganization proposal should help assuage the conflict with the cabinet. By removing some policy responsibility from the White House staff and returning it to the cabinet, department Secretaries would again assume a major policy formulation role. In return, more emphasis would be given to the White House staff responsibility for building coalitions, for negotiating, and for brokering within the administration. For instance, because the Economic Affairs Staff would contain both a domestic and an international component, our hope is that more questions might be asked on behalf of the President about problems such as the relationship of American interest rates to exports, the relationship between exports and imports to unemployment, the effects of massive sales of wheat abroad on domestic food prices, and so forth. If the system works well, the President should receive better information about the impact of his policies on a variety of political constituencies, allowing him to formulate new policies to bridge the various interests among different groups.



---

While the preceding discussion focused on the White House staff and its functions and problems, this section considers other new management units that might be established within the Executive Office of the President (EOP) to facilitate its effective functioning.

## **Other Management Staff Functions**

**A Political Executive Search Office should be formed to maintain a file of talented persons suitable for holding top positions in the executive branch and to establish information-retrieval systems that would be of assistance to incoming Presidents.**

### *Political Executive Search Office*

Current data on persons qualified to fill executive positions is maintained by the Office of Personnel Management (OPM)—the agency that succeeded the Civil Service Commission as manager of federal personnel matters. However, these data are not organized by political and demographic information, and should not be so organized in order to maintain the nonpartisan status of OPM. Yet, another set of data that includes demographic categories would be useful for incoming Presidents, who typically seek the appointment of persons of various ethnic, racial, and religious categories to demonstrate that such groups will play an important role in the new administration.

At present, each incoming administration must gather its own information on those persons qualified for high-level positions by establishing a transition office to compile lists of recommended appointments for top-level executive branch positions. However, the 11 weeks between the November election and the inauguration of a new President is insufficient time for a Presidential transition team to survey the country thoroughly, which may result in many of the best qualified persons being overlooked.

One solution might be to survey the country continuously for new possibilities by establishing a small unit within the Executive Office of the President to maintain files of persons qualified for political-level appointments. In addition to conducting its own search, the Political Executive Search Office could also accept applications from the general public, placing this information in its files. Finally, such an office could maintain a political and demographic information-retrieval system that could be used by an incoming administration.

**A Public Management Office should be formed, possibly within the Executive Office of the President.**

### *Public Management Office*



---

Corporations and nonprofit institutions in the private sector frequently make use of management consulting firms to obtain fresh outside judgments about various internal management problems that are free of the biases, the personal management styles, and the turf-protecting attitudes inherent in organizations. Establishing such a management consulting service within the federal government could provide all agencies with the same valuable outside judgments. Use of the service could be requested by any agency head or by a cabinet officer, although executive branch heads would retain the freedom to use outside consulting firms as well. However, to the extent that the public consulting service is used, the cumulative wisdom about agency management would be retained within the government.

**A staff for long-range policy analysis might be established within the Executive Office of the President. This unit would engage in broad-scale research and data collection to anticipate general trends and problems in American society.**

*Long-Range  
Policy Analysis*

Existing long-range policy analysis within the executive branch is limited to the perspective of a single department or agency, is *ad hoc* in nature (such as Presidential commissions), and is somewhat limited in scope (as in the case with various units within the EOP). Accordingly, the executive branch requires a unit that would anticipate trends and problems to facilitate effective responses.

One argument for such an analytic unit is that without this capability, serious shortcomings in high-level management of the federal government may continue. These shortcomings include:

. . . severely limited ability to anticipate trends, events, and problems; policy formulations which are narrow in scope, or if broad-gauged, often hortatory and unrelated to purposive action; difficulty in integrating policy across functional lines and consequent difficulty in coordinating programs of action; lack of a sense of history or an institutional memory; and a dominant style which is reactive. Because people at high government levels are chronically overworked and are forced to spend most of their time in "firefighting," they lack the opportunity to engage in thoughtful reflection about what they are doing and why, the kind of reflection which might enable them to ameliorate some of these problems.<sup>2</sup>

Many organizational units within the EOP do have a multiagency focus for long-range policy analysis—the Office of Management and Budget, the Domestic Policy Staff,

---

the Council of Economic Advisers, the National Security Council, and the Council on Environmental Quality. However, these agencies are insufficient for several reasons. First, these EOP units still have subject-matter or purpose limitations that create difficulties in integrating policy between and among the units. Second, they also tend to become preoccupied with short-range demands. Finally, none of the units was established as a systematic policy analysis organization *per se*, free of arbitrary functional limitations, employing interdisciplinary analysis, and able to take a long-range view.

Although the best location for this unit has not been determined, the office should be independent to forestall its conversion into a firefighting agency by a hierarchical superior. The office should also be sufficiently close to the President to enhance its use, but adequately removed to prevent its focus from becoming highly political. To avoid bureaucratization, the office should be a small unit, staffed by professionals. Although some personnel might be permanent, it would also be desirable to obtain fresh ideas from temporary personnel on loan from other governmental agencies, universities, or business.

The main product would be various studies. Some of these staff studies could be self-generated to enhance the formulation of new ideas; other studies could be assigned by the President. The long-range policy analysis unit might emphasize broad-gauged studies of the economy, energy problems, and trends in the supply of natural resources. Because many such questions require an international perspective, the unit would require a foreign policy component. An effort might be made to publish the studies in a manner that would attract wide readership, but the unit would not have responsibility for the implementation of its recommendations.

Another activity could be the generation of ideas for demonstration or pilot projects. In the past, large federal programs have sometimes been introduced so rapidly that major errors could not be foreseen and prevented. The staff might use their knowledge of long-run trends to indicate areas in which actions by the federal government might appropriately occur within a decade and how pilot projects might improve our ability to act in such areas.

Just as many people are unaware of the complicated patterns of cooperation between the federal government and private firms, there is a pervasive misconception about the division of labor between the President and Congress. Far too many citizens believe the simplistic notion that the President leads and the Congress' job is to respond to his initiatives. In truth, a complicated and dependent relationship

**Cooperation  
with Congress**



---

exists between the branches. Some programs are initiated by the President, some by Congress. Sometimes Congress vetoes an initiative, other times the President does.

Constructive cooperation between the executive branch and Congress is not always easy to obtain. The Constitutional provisions for separation of powers imply the maintenance of some degree of tension, which is accordingly inherent in the basic design of American government. In particular, even the matters of organization and management of the executive branch are subject to joint Congressional-Presidential action. Congress controls the basic courses of administrative authority and establishes the federal budget; it makes the laws on personnel, grants the authority for administrative reorganization, and possesses the Constitutional authority to control much of the shape of the Executive Office of the President.

However, there are some possible ways to strengthen the ties between Congress and the President. The proposals in Chapter 2 for strengthening the parties are predicated on the notion that stronger parties can forge a tighter coalition between the two branches by making the successes of the system as a whole determinant of the fates of each, individually. In the chapter on Congress, several proposals, although justifiable for other reasons, could also improve cooperation between the executive branch and Congress. As noted, strengthening the leadership of the political parties in Congress enables the President to rely on leading members in coming to mutual agreements. Consolidation and rationalization of committees could also facilitate a consolidation of authority, which would ease negotiations between officials of the executive branch and Congress. Action-forcing procedures in Congress would speed the fulfillment of agreements made by Congressional leadership, thereby improving executive-Congressional relations. Multiyear authorizations and appropriations would improve the tenor of relationship between the two branches by enabling executive agencies to make definite plans for more than a single year and by reducing the amount of agency resources diverted to preparing testimony before Congressional committees. In summary, more cooperation in the relationships between the President and Congress could help to increase the accountability of the executive branch to the public.

In order to fulfill the mandates, policies, and programs established by Congress and the President, the executive branch requires motivated, high-quality personnel. Yet the current level of criticism aimed at federal civil servants courts a significant danger—that of hampering the quality of the executive branch. Unrelenting condemnation may

## **Federal Government Personnel**



lead not only to difficulties in hiring first-rate talent for the civil service, but also to lower morale and to early retirements or to moves into the private sector by current personnel—especially by top-level federal managers who may be attracted to the higher salaries that are available outside government.

Numerous reasons exist for critical attitudes toward federal civil servants held by both the public and elected officials. One may be the widespread impression of a rapidly growing federal government. However, that growth has been in programs, not personnel. In fact, federal civilian employment levels have changed very little over the past 15 years, while state and local governments have dramatically expanded (see Table 5). For example, in 1950 federal civilian employees represented 33 percent of the total government employment in the United States, while state and local employees accounted for 66.9 percent. By 1975 those figures had changed to 19.2 percent and 80.7 percent, respectively.

Another motive for criticism may be the perception of inadequate management of federal programs by the federal bureaucracy. However, many programs are intergovernmental partnerships with state and local governments, and therefore criticism should be equally aimed at all program administrators across all jurisdictions. Indeed, welfare programs—one source of greatest public debate—are largely administered by state and local governments.

The practice of establishing contracts with private firms and nonprofit organizations to collect data, to conduct research, and to accomplish other tasks for the federal

Year	Total Employees (in thousands)	Federal Civilian	State and Local
1950	6,402	33.0%	66.9%
1960	8,808	27.4	72.5
1965	10,589	24.4	75.5
1967	11,867	25.2	74.7
1970	13,028	22.1	77.8
1971	13,316	21.5	78.4
1972	13,759	20.3	79.6
1973	14,139	19.7	80.2
1974	14,628	19.6	80.3
1975	14,986	19.2	80.7

**Table 5**  
**Government  
Employment  
Levels in the  
United States,  
Selected Years,  
1950-75**

Source: Leon D. Epstein, "The Old States in a New System," in *The New American Political System*, Anthony King, ed. (Washington, D.C.: The American Enterprise Institute, 1978), p. 331.

---

government may be yet another source of discontent about the federal bureaucracy. The belief that the government should do its own work may be at the root of this attitude, but arguments exist both for and against contracting with outside agencies. For example, although misuse and waste of public funds have occurred through the use of such arrangements, tax dollar savings can often be better achieved by using private sector expertise rather than by hiring a number of civil servants (some until retirement) to accomplish short-term projects. Contracting thus helps reduce the employee size of "big government." In addition, contracted studies can often provide more varied information than may be available from a single group of civil service experts.

Finally, instances of uncaring, unresponsive, and even abusive behavior on the part of federal employees heightens the criticism of the federal bureaucracy. Continued actions to improve the management of the executive branch, however, should lessen the degree of improper behavior by civil servants. Moreover, current civil service rules should be monitored to determine if discharge of incompetent or otherwise inappropriate federal employees is still too difficult to accomplish.

In answer to the rising volume of criticism, changes are under way. The best example of the constructive efforts to improve the quality of the federal executive branch personnel is the Civil Service Reform Act of 1978, which is often described as the most important single revision of the civil service statutes since the system was established in the 1880s. The act abolished the Civil Service Commission and established in its place the Office of Personnel Management (OPM) and the Merit Systems Protection Board, thereby separating the management and regulation functions of the former agency. Some of the most promising provisions of the act include the following:

### *Civil Service Reform*

- *Senior Executive Service (SES)*. This program established a group of top civil service managers who have demonstrated exceptional abilities. In order for the government to use their talents best, these executives waive their right to refuse transfers, allowing them to be moved from agency to agency. In return, they become eligible for bonus payments and for service in jobs normally open only to political appointees. The SES should increase the efficiency of the executive branch, because highly talented managers can be used in a variety of positions. In addition, the SES system should broaden the perspectives of top federal managers, who can become limited in outlook if they remain in a single agency.



- 
- *Political Appointees Provision.* The act includes a provision that allows the President to make an agency more responsive to his policy preferences. Although only 10 percent of the SES positions is open to political appointees, within this number the President is allowed to appoint as many as 25 percent of a particular agency's SES slots. Accordingly, the President has the option of concentrating his political appointees within certain agencies, thereby making them more responsive to his wishes.
  - *Merit System Protection Board.* The act established this board to handle employee appeals about federal managers' actions and to investigate charges of improper personnel practices. The Merit Systems Protection Board and its special counsel, who has the authority to investigate abuses of the system by management, serves as a protection against politically motivated evaluations of employees or other abuses of the civil service system.
  - *Personnel Dismissal Procedure Reforms.* The act eliminated some procedures required to dismiss an incompetent worker from the civil service. Before 1978, most federal managers would rarely attempt to fire personnel, because extraordinary amounts of time and complex procedures were required. However, extensive appeal procedures have been retained, which may limit the effectiveness of the reforms.
  - *Merit Salary Increase Reforms.* The reform act permits an agency to tie merit salary increases for mid-level managers (GS-13 to 15) to performance evaluations. Currently, several agencies have implemented this system.

Although it is too early for a full understanding of all consequences of the act, the Senior Executive Service and other provisions should be carefully evaluated with the goal of making further improvements. To date, however, at least four problem areas in the system have become apparent: the veterans' preference system, the development of the capabilities of mid-level managers, the lack of Congressional support for the system of bonuses for SES executives, and the excessive turnover of managers at the assistant secretary level. In recognition of these problems, the Panel offers several recommendations.

**Nondisabled veterans should receive extra points on civil service examinations for only a limited time after they have left military service.**

*Veterans'  
Preference  
Considerations*

---

According to the Veterans' Preference Act of 1944, nondisabled veterans receive five extra points on job qualification examinations for the civil service. Although the law does not apply to peacetime veterans who have left the military since October 1976, the extra points are given to qualifying veterans for their lifetime and for any number of examinations. Disabled veterans receive ten points on job qualification examinations for their lifetime.

Although it is generally agreed that this compensatory provision for disabled veterans is just, point bonuses for nondisabled veterans have been questioned because they have had a significant impact on the quality of entry-level civil service personnel. The problem is not that unqualified persons are hired, but that some of the most outstanding persons, particularly women, are not hired by the civil service.

A 1976 General Accounting Office study of veterans' preference cited numerous examples of anomalies. For instance, in Atlanta, the person who scored highest on the entrance examination for corrections officers did not qualify for the 81-person job list because all the slots were filled by those who received veterans' bonus points. Although a Dallas woman achieved a perfect score on an air traffic controller examination, she ranked only 147th on the list after veterans' preference points were added to qualifying scores. Finally, a woman in California originally placed 12th on an accountancy examination but dropped to 111th after veterans' points were added.

In 1978 the Carter Administration initially recommended that the point system for nondisabled veterans should be dropped 10 years after they have left the military. The administration changed this to 15 years in the face of opposition by veterans' lobbies. However, such restrictions on veterans' preferences were overwhelmingly defeated in Congress with one exception—a measure that dropped preference for high-ranking, nondisabled officers. In light of the problems involved, the issue of preference for nondisabled veterans should be reexamined.

**More attention should be given to the development of the skills and motivation of mid-level federal managers.**

*Development  
of Mid-Level  
Federal  
Managers*

With respect to the promotion process, the eventual placement of capable top-level managers requires attention to the development of the skills of mid-level managers. To achieve this goal, the most promising managerial personnel should be located, and their motivation, knowledge, managerial skills, experience within a variety of sectors of American society, and knowledge of the government as a whole should be developed. This improvement process for



---

management talent can be accomplished by sympathetic supervision and by a planned program to broaden their experience through authorized leaves of absence for higher education courses or for temporary managerial assignments in the private sector. In addition, encouraging mid-level managers to serve in more than one federal agency could also help to broaden their experience.

At present, the civil service system maintains a number of education programs that attempt to realize some of these goals for mid-level management. The programs include full-time attendance for several weeks at the Federal Executive Institute in Charlottesville, Va., or paid leave to study at an approved university for an academic year. Less ambitious programs involve part-time study—usually in the manager's area of specialization and in techniques of management and personal relations—while on the federal payroll.

Such education programs should be carefully evaluated with a view to revising and extending them. In particular, the currently small program of study at universities for the most capable federal managers should be greatly expanded. Such paid leave might be regarded not only as a means of broadening the experience of federal managers, but also as an honor to be earned.

Even more important than education programs for experience-broadening purposes are interagency transfers for junior and mid-level managers. A common practice in the private sector and the armed forces, such transfers give the federal executive wider experience than remaining in a single agency, as is now commonly the case. Much of the "bureaucratic behavior" that is frequently criticized may be the result of mid-level executives serving for 10 or 20 years in a single agency. After a decade or two, such executives may see the world from the viewpoint of one governmental organization.

A difficulty in implementing an interagency transfer strategy is that the present incentive structure of the civil service rewards those who remain with a single federal agency and concentrate their efforts toward promotion within that agency. Accordingly, federal executives may resist interagency transfers. To rectify this problem, the federal government should adopt a new management ethos—one that values the broadening experience of service in a number of agencies. Such an attitude could produce outstanding federal executives, who have a wider understanding of the viewpoints of other agencies and the needs of the public.

---

**Congress should not abolish the bonus system for SES participants until the program has been given a chance to work.**

*SES Bonus  
System*

---

The top managerial positions in the executive branch entail significant responsibilities. Many managers are in charge of hundreds or even thousands of persons; others manage research units containing scores of experts or technical personnel. In addition, many of these managers are lawyers, scientists, engineers, medical doctors, or hold advanced degrees in other fields.

At present, the effective pay ceiling for career civil servants is \$50,112 per year, although a few political appointees are paid somewhat more. In August 1980, President Carter proposed that federal workers receive a 9.1 percent pay increase, but executives earning top salaries were to be given no raise at all. If this trend continues, many of the most able federal executives (some of whom are saving the taxpayers substantial amounts of money) may leave government work for better paying jobs in the private sector. Given this situation and such executives' levels of responsibility and expertise, consideration should be given to permitting higher pay levels for certain positions.

Although the Panel does not advocate increasing top salary levels to those available in the private sector, one financial measure that might help retain talented managers is the system of bonuses for exceptional service legislated by the 1978 Civil Service Reform Act for the Senior Executive Service. In addition, such bonuses provide a financial incentive for top performance by high-level civil service executives. Although the act allows bonuses of up to \$20,000 per year as a reward for outstanding service by SES executives, the actual amount received by most qualifying civil servants in 1980 was expected to be \$5,000 or less.

This system of bonuses has become an issue in Congress. Although the act stated that no more than 50 percent of the SES executives could receive bonuses in a given year to prevent such bonuses from becoming routine, the amount of bonuses can be altered annually by Congress through appropriations legislation. In 1980, the House of Representatives cut most of the bonus money, although the Senate left it intact. In conference, the Senate position carried, and the bonus remained with minor alterations—largely because of a major lobbying campaign on its behalf by President Carter. During the 1980s, it is possible that the SES bonuses may become a yearly struggle as members of Congress use this issue to placate their constituents who are attacking “overpaid bureaucrats.”

**The recruitment of political executives at the assistant secretary level should emphasize locating those persons who are eager to serve a full 4-year term.**

*Assistant  
Secretary  
Recruitment*



---

According to Professor Hugh Heclo of Harvard, the average service of assistant secretaries during the period 1960-72 was 22 months. Excessive turnover at the subcabinet level continues to be a particular problem of American public administration. Even if such executives are already expert in their fields of assignment, a few months are required for them to learn the intricacies of their new positions. Adequate political accountability to the President is therefore difficult to achieve if the top executives at the subcabinet level are frequently leaving.

As political appointees, assistant secretaries are paid about \$56,500 per year. Until public attitudes toward the federal bureaucracy change, Congress will probably not increase this amount beyond increments to compensate for inflation. Therefore, the President and his assistants should not rely on financial remuneration to retain subcabinet officers for a full term. The emphasis should of necessity be on the recruitment of persons exceptionally motivated to serve in the government.

A common Presidential campaign promise is a dramatic reorganization of the executive branch to resolve the problems of the federal bureaucracy. But this often develops unreasonable expectations about exactly what can be achieved through reorganization. Because Presidents have not achieved extraordinary results in their actual efforts to reorganize, some observers have concluded that reorganization efforts have little value.

The Panel urges that these two extremes in attitude toward reorganization should be avoided. Administrative reorganization is neither the only answer to problems of bureaucracy, nor necessarily a waste of effort. Administrative reorganization can succeed in improving the effectiveness and accountability of the executive branch, and such improvements can result from a number of modest changes.

The effort to make the executive branch more effective and accountable is ill served by suggesting to the public that one set of large-scale reforms would resolve all long-standing issues. The result would be a new disillusionment, similar to that suffered over the War on Poverty programs of the Great Society legislation. Dramatic announcements, followed by dramatic failures, can lead the public to give up on a worthwhile objective too early. Instead, the executive branch requires a sustained effort of continuous reforms, analyses, and readjustments throughout the decade of the eighties.

The Panel thus advocates a middle-ground approach to administrative reorganization that views reform as a useful activity, but not as one that requires a single, grandiose

## **Reorganization of the Executive Branch Structure**

---

organizational scheme. A bipartisan, permanent citizens' commission for administrative reorganization also should be established to develop plans for change.

**Some departments, agencies, and bureaus of the federal government should be reorganized by function into new groupings of organizational units. To serve the needs of the President best, organizations should be established by reasonably broad purpose—not so narrow as to be overly responsive to specific clientele groups, nor so broad as to be unmanageable.<sup>3</sup>**

*Functional  
Reorganization*

In its simplest form, the concept of functional reorganization can be defined as combining those organizational units that perform similar tasks in order to strengthen the performance of a given function and to prevent problems of working at cross-purposes, duplicating expenditures, and so forth.

One poor usage of the time of the President and his staff is decisionmaking about matters of secondary importance that have been referred to the White House because separate aspects of a problem are treated by different, uncoordinated agencies. For instance, the Forest Service (Department of Agriculture) and the National Park Service (Department of Interior) both have some jurisdiction over national forests. Interdepartmental rivalry might force a relatively minor decision (for instance, about timber cutting) to the White House. However, if both agencies were located in the same cabinet department, the interagency controversy could be resolved at the level of the department Secretary, thereby saving the time of the White House staff and of the President for broad policy issues of more importance. Functional reorganization therefore can enhance the effectiveness of the executive branch by helping to ensure that routine conflicts are solved at a level of administration below that of the White House.

A second advantage of functional reorganization is that special interest group power can be lessened. Often such power is partly dependent on alliances with the administrators of an agency friendly to an interest group (two-thirds of the iron triangle). If a department is organized by reasonably broad purpose, the power of one agency-group coalition can be checked by the power of other coalitions operating within the same department. For instance, one agency coalition might advocate increased timber cutting, pointing out the economic advantages to the lumber industry and its employees, the value of keeping down the price of housing, and the export value of lumber. However, another agency coalition might argue for limiting timber cutting because of the intangible value



---

of forests for the quality of life, as well as for the financial advantages of a local tourist industry. In such a situation, the department Secretary could make a decision that would balance the interests of the opposing coalitions while considering the interests of the general public. Such a decision probably would not be dictated by either coalition of interests.

Reorganization by function should not, however, reduce the executive branch to a few “super departments” which would be so broad as to be unmanageable. Grouping similar activities in a single department to retain the decisionmaking authority on most matters at the cabinet Secretary level is desirable, but if a department grows too large, and its activities become too varied, either it begins to dissolve into its subunits (perhaps former departments) or it assumes part of the coordinating function that properly belongs at the White House level. For example, a “Department of Human Resources”—which could contain the Departments of Health and Human Services, Education, and parts of the Departments of Housing and Urban Development, Labor, and Agriculture—would be nearly impossible for a department Secretary to manage. In addition, to resolve the various interagency controversies, the Secretary of such a giant department would have to make some decisions about domestic policy that properly belong to the President.

Another disadvantage of such “super departments” is that too many layers are created in the organizational hierarchy of the executive branch. The result of this situation is too much condensation of the information and of the policy options that are presented to the White House. For instance, a Secretary of “Human Resources” might restrict the access of the education division head to the White House. At some point, too little information about education might be relayed to the President.

An important problem in establishing very broad departments, organized by function, was illustrated by President Nixon’s inability to implement the Ash Council reorganization plan of 1970, which advocated a number of “super departments.” If a President shakes up most of the government to organize a few, very broad departments, he must pay a high political cost—annoying many members of Congress, interest groups, and agency chiefs. Only when a President is most powerful, such as during Franklin Roosevelt’s first term, is it politically possible for a President to reorganize governmental departments into a few, very large ones, organized by function.

Another consideration arises with regard to reorganization—there is a short-run cost in efficiency during the implementation of a reorganization plan. Months can be devoted to struggles over the assignment of new jobs. Turf struggles and new conflicts over authority and resources are other consequences. Presidents need to balance the

---

costs of short-run upheaval in agencies against the long-run benefits of reorganization.

One recurring issue in the organization of American national government is the relationship of independent regulatory agencies to the President. Some argue that if the President is to be accountable for the execution of the laws, he should have the final authority over decisions made by independent boards of commissioners, such as the Federal Reserve Board. Others maintain that the present system of independent boards is preferable, because such commissioners deal with technical issues that should be removed from politics.

In summary, functional reorganization of the executive branch should be approached in a pragmatic fashion. First, such plans should be balanced against other principles of public administration, such as the need to give adequate information about important policy issues to the White House. Second, although reorganization of one or two particular agencies may be required, the initial impulse does not always imply the need for a general, wholesale functional reorganization plan for a large sector of the government. The President and his staff may desire to reorganize a few agencies for other reasons—an agency may be out of control; two agencies may be in constant conflict; an agency may be beset by public scandal; and so forth.

**In the light of the continuing need for a dispassionate body to examine and analyze the structure of the executive branch, a Bipartisan Citizens' Committee for Reorganization should be created.**

*Bipartisan  
Citizens'  
Committee for  
Reorganization*

Significant political obstacles to administrative reorganization of the executive branch usually arise. Those interest group leaders and members of Congress who believe themselves to be in a favorable situation to influence the policies of certain agencies will often oppose reorganization. Such coalitions of interest groups, members of Congress, and bureaucrats can put up substantial resistance to a Presidential reorganizing goal. Such resistance can be overcome in most cases, but victory requires cashing in political debts owed to the President, who thereby cannot use such influence for other, perhaps more important purposes.

Because of this political resistance to reorganization, the best time to implement such a program is during a President's first year in office, when opposition to a President by Congress ordinarily has not yet coalesced. However, a paradox exists. During the first year, a President may be relatively unfamiliar with the executive branch and with the merits of reorganization proposals. To alleviate this situation, a thorough analysis of reorganization proposals



---

by a nonpartisan group prior to a President's inauguration would be useful. A new President and his staff could be briefed on a variety of reorganization proposals, with the freedom to choose which they preferred to implement.

A bipartisan commission, appointed by both the President and leaders of Congress, could be most useful for a President of either party. The members of the commission would be private citizens—leaders of politics, of economic activity, or of other facets of society. The commission could be a permanent body, although its members would serve staggered terms of fixed length (which could be renewed).

1. This proposal has emerged from the National Academy of Public Administration's Presidential Management Panel. The following summary draws heavily on Academy work, especially the paper contributed by I. M. Destler, "Presidential National Security Management."
2. John E. Harr, "The Planning Function in the Executive Office," paper prepared for the Presidential Management Panel of the National Academy of Public Administration, Washington, D.C., 1980.
3. Based on: Rufus E. Miles, Jr., "Considerations for a President Bent on Reorganization," *Public Administration Review* (March/April 1977):155-162.

## References

- Abrams, C. J. "Reorganization in California State Government," paper contributed to the President's Commission for a National Agenda for the Eighties, Washington, D.C., 1980.
- Cronin, Thomas E. *The State of the Presidency*. Boston: Little, Brown & Co, 1975.
- Destler, I. M. "Presidential National Security Management," paper contributed to the Presidential Management Panel of the National Academy of Public Administration, Washington, D.C., 1980.
- Epstein, Leon D. "The Old States in a New System," in *The New American Political System*. Anthony King, ed. Washington, D.C.: The American Enterprise Institute, 1978.
- Harr, John E. "The Planning Function in the Executive Office," paper contributed to the Presidential Management Panel of the National Academy of Public Administration, Washington, D.C., 1980.
- Hartz, Louis. *The Liberal Tradition in America*. New York: Harcourt, Brace, Harvest Paper ed., 1962.
- Hecklo, Hugh. *A Government of Strangers*. Washington, D.C.: The Brookings Institution, 1977.
- Hecklo, Hugh. "Organizational Trends in the Executive Office of the President," paper contributed to the Presidential Management Panel of the National Academy of Public Administration, Washington, D.C., 1980.
- Miles, Rufus E., Jr. "Considerations for a President Bent on Reorganization," *Public Administration Review* (March/April 1977):155-162.
- National Academy of Public Administration. *A Presidency for the 1980s*. Washington, D.C.: National Academy of Public Administration, 1980.
- Neustadt, Richard E. *Presidential Power*, second ed. New York: John Wiley, 1976.
- Seidman, Harold. *Politics, Positions, and Power: The Dynamics of Federal Organization*, third ed. New York: Oxford University Press, 1980.
- Thompson, Frank J. "Topics in Federal Personnel Management," paper contributed to the President's Commission for a National Agenda for the Eighties, Washington, D.C., 1980.



---

## Chapter 5

# THE Federal Courts

**T**he third branch in the American system of federalism is the courts. In the context of coalition building, use of the courts often represents a breakdown in other conflict resolution strategies, such as negotiation, compromise, and brokering among competing interests.

America has become an increasingly litigious society. In comparison with other industrialized democratic societies such as Great Britain, West Germany, France, and Japan, the courts in the United States play a greater role in the process of making important decisions. In addition, the number of lawyers per capita in America is much greater than in other countries. During the 1970s, the tendency to resolve disputes through litigation was pronounced. Thousands of new suits were filed in federal courts involving topics such as discrimination against individuals, Social Security benefits, rights of prisoners, and contracts within the stream of interstate commerce.

Given the continued and increasing importance of the courts during the coming decade, the Panel has chosen two issues related to our judicial system for particular attention. First, the problem of a burgeoning workload imposed by an increasing number of civil cases filed in the federal courts is of concern. Second, alternatives to the formal trial process, such as mediation and arbitration, are of interest. Such alternative modes of dispute resolution should be encouraged as possible means not only of reducing the workload of federal courts, as well as of state and local courts, but also of lowering the intensity of conflict among societal groups and of expediting the resolution of disputes between citizens.

Although several other important issues related to the efficient and fair functioning of the court system at the federal, state, and local levels are arising, time limitations prevented the Panel from fully discussing them all. However, the Panel encourages the nation to examine its court system fully during the coming decade. Finally, in keeping with the Panel's focus on institutions of the federal government, this chapter concentrates on the federal courts, although the problem of work overload (and many suggested remedies) applies to state and local courts as well.

Although a heavy workload has been a perennial problem for the federal court system, recent increases have been dramatic. From 1970 to 1979, the number of civil cases filed in federal district courts increased by 77 percent—from 87,321 to 154,666 (see Table 6). This increase in the number of filings has been mirrored by an increase in the number of cases pending 3 years or more before coming to trial—from 8,004 in 1970 (8.8 percent) to 19,089 in 1979 (11.5 percent) (see Table 7).

**Table 6**  
**U.S. District Courts: Civil Cases Filed, Terminated, and Pending on June 30, 1940-79, Percent of Change**

Percent Change in 1979 Over	Authorized Judgeships*	Civil Cases Filed		Civil Cases Terminated	Civil Cases Pending on June 30
		Number	Cases per Judgeship		
1940	+ 171.6%	+ 345.3%	+ 63.9%	+ 283.6%	+ 503.2%
1950	+ 140.0	+ 182.9	+ 18.1	+ 169.1	+ 219.8
1960	+ 110.7	+ 160.9	+ 24.0	+ 131.8	+ 190.3
1970	+ 28.7	+ 77.1	+ 37.6	+ 78.2	+ 90.8
1978	+ 29.3	+ 11.5	- 13.8	+ 13.8	+ 6.8

\* Many of the judgeships authorized by the Omnibus Judgeship Act of 1978 had not been filled by the end of 1979. However, by November 1980, 491 of the 516 district judgeships were filled.

Source: *Annual Report of the Director of the Administrative Office of the United States Courts, 1979* (Washington, D.C.: U.S. Government Printing Office, 1979), p. 126.

In addition to the number of filings and to the length of waiting times, a trend toward longer trials also has occurred (see Table 8). In 1972, 13.8 percent of all trials in federal district courts lasted 4 days or longer; by 1979, that figure had risen to 18.8 percent. Of the jury trials held in federal district courts, in 1972, 22.8 percent required 4 days or more, while in 1979 lengthy jury trials had increased to 35.9 percent. (Jury trials were 45.4 percent of all trials in 1972, and 38.4 percent in 1979.)

The increased litigiousness of society is also reflected in the increased number of appeals that have been lodged. According to the Director of the Administrative Office of the U.S. Courts, the new appeals docketed in the U.S. courts of appeals in the year ending June 30, 1979 climbed almost 7 percent to a record number of 20,219 (see Table 9). This figure reflects a 73.4 percent increase since 1970. Federal appeals are generally heard by panels of three judges,



Table 7		
Civil Cases Pending in U.S. District Courts for Three Years or Longer, Selected Years, 1961-79		
Year	Number of Cases Pending 3 Years or Longer	Percent of the Total Pending Cases
1961	6,071	9.9%
1966	7,427	9.7
1970	8,004	8.8
1971	9,022	9.2
1976	9,414	6.9
1979	19,089	11.5

Source: *Annual Report of the Director of the Administrative Office of the United States Courts, 1979* (Washington, D.C.: U.S. Government Printing Office, 1979), p. 254.

Table 8								
Percent of Trials in U.S. District Courts Lasting Four Days or More, 1972-79								
	1972	1973	1974	1975	1976	1977	1978	1979
All Trials	13.8%	14.4%	15.8%	16.6%	16.5%	18.2%	17.7%	18.8%
Jury Trials	22.8	23.0	26.4	28.1	28.7	31.4	33.9	35.9

Source: *Annual Report of the Director of the Administrative Office of the United States Courts, 1979* (Washington, D.C.: U.S. Government Printing Office, 1979), p. 296.

although occasionally the panels are larger. Given this fact, the number of new appeals amounted to 460 per judicial panel in 1979. This contrasted to 361 new appeals per panel in 1970 and only 131 appeals per panel in 1950—increases by 1979 of 27.4 percent and 251.1 percent, respectively.

All of these figures of phenomenal increase concerning the federal court system point to a serious issue for the 1980s—the quality of justice available from the courts. Although the length and expense of litigation for the more spectacular corporate antitrust cases are widely reported, the consequences of lengthy delay (and resultant increased costs) are most serious for the general public. Because citizens rely on the efficacy of civil litigation to protect their rights against encroachment from government and corporate organizations or from the discriminatory practices of other persons, they have a great deal to lose if the courts continue to show difficulty in keeping up with their

caseloads. As stated by Rep. Robert W. Kastenmeier (D-Wis.), former chairperson of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, and his counsel, Michael J. Remington:

If a litigant who has had his rights abused must wait three or four years for relief—as too often is the case in many state and federal courts—that person is denied effective access to justice. What good is the sacred writ of *habeas corpus* if the petitioner must serve most of his sentence before a determination of his rights? What good are Social Security benefits for the elderly or the disabled if they must wait years for a judicial determination of their disabilities?<sup>1</sup>

**Table 9**  
**U.S. Courts of Appeals: Appeals Commenced, Terminated, and Pending on June 30, 1940-79, Percent of Change**

Percent Change in 1979 Over	Authorized Judgeships	Appeals Commenced			
		Number	Cases per Panel	Appeals Terminated	Appeals Pending
1940	+ 131.6%	+ 486.7%	+ 150.0%	+ 451.2%	+ 969.1%
1950	+ 103.1	+ 614.5	+ 251.1	+ 517.8	+ 971.0
1960	+ 94.1	+ 418.6	+ 167.4	+ 409.8	+ 708.1
1970	+ 36.1	+ 73.4	+ 27.4	+ 76.9	+ 103.6
1978	+ 36.1	+ 6.9	− 21.4	+ 6.9	+ 7.8

Source: *Annual Report of the Director of the Administrative Office of the United States Courts, 1979* (Washington, D.C.: U.S. Government Printing Office, 1979), p. 124.

The Electoral and Democratic Process Panel is concerned by the trend of increased litigation in the 1970s. If the number of filings in federal courts continues to increase at the same pace, if the number of trials delayed 3 years or more continues to rise, and if the length of trials continue to grow, the federal judicial system will be severely overburdened, and its ability to enhance justice in our society will be severely compromised. However, significant attempts to ease the burden on federal courts have been initiated. **The Panel recommends that the federal court system continue to experiment with methods of relieving its workload.**

At least six measures to reduce this workload are available. Three have been implemented during the 1970s: establishing court administrators; providing federal magistrates

**Measures to Reduce the Overload**



---

to decide minor judicial disputes; and increasing the number of federal judges. A fourth measure—reducing the number of “diversity” cases that fall within the jurisdiction of federal courts—may be mandated by Congress through appropriate legislation during the 1980s. Two other measures include experimenting with methods to simplify court procedures and thereby to speed up trials, and resolving disputes before they are taken to courts through alternative strategies of mediation and arbitration.

No single measure can serve as a panacea for the overburdening of the courts. Most of these approaches have some drawbacks, and their increased implementation does not promise unmitigated progress. Nevertheless, further use of such measures would help to alleviate the current overburdening of the federal courts.

**Court Administrators.** The burden on federal judges has been significantly reduced since 1971 by the appointment of court administrators. These persons supervise tasks such as preparing budgets, setting guidelines for personnel policy, and allocating limited courtroom space—details formerly occupying a judge’s valuable time. Continued and expanded use of court administrators can play an important role in facilitating the conduct of the courts.

**Federal Magistrates.** To help deal with the burden of work in the federal courts, the Federal Magistrates Act of 1968 established these “assistant judges.” In 1979, federal magistrates made 292,179 decisions on petty violations (such as breaking fishing laws), minor violations (for example, intoxication on federal park lands), administration of bail, postindictment arraignments, prisoner petitions, pretrial conferences, and so forth. In 1979, there were 196 full-time magistrates (an increase from 61 in 1970) and 271 part-time magistrates. Although increased use of magistrates has helped to alleviate the problem of excessive workload, this measure is insufficient because magistrates cannot make major decisions concerning important cases, which continue to increase in number.

**Increased Number of Judges.** The Omnibus Judgeship Act of 1978 increased the number of federal district court judges from 399 to 516, and federal circuit court of appeals judges from 97 to 132. These increases should relieve some of the burden on the federal court system. For example, the number of cases filed per judgeship in federal district courts decreased from 348 in 1978 to 300 in 1979.

Such relief, however, is only temporary. As U.S. Supreme Court Chief Justice Warren Burger observed in 1980: “The impact of 152 new federal judges in the Omnibus Bill last year will soon be wiped out [by the increases in

---

cases].”<sup>2</sup> Accordingly, some observers expect that Congress will need to add 50 more federal judges during the early 1980s. However, when increasing the number of federal district judges, care should be taken not to overload the federal courts at the appellate level. Although increasing the number of district judges may shorten the trial waiting time at the district level, such moves may also lengthen the delays at the appellate level.

**Reduction in Federal Court Jurisdiction.** Many observers believe that during the 1980s, Congress will pass legislation to greatly reduce the jurisdiction of federal courts in cases of “diversity of citizenship.” Such so-called “diversity cases” refer to suits involving citizens of two or more states. Although many (but not all) diversity cases concern minor disputes such as claims arising from automobile accidents, most such cases currently can be taken to a federal court if this step is desired by one of the litigants. At present, about 25 percent of all civil cases in federal courts are filed under the diversity jurisdiction.

An ideologically broad coalition of national leaders—including Chief Justice Burger and President Jimmy Carter—favor a Congressional measure to restrict diversity cases as a method of lessening the federal courts’ workload. Although the House of Representatives passed a measure in 1978 that would have eliminated most diversity cases from federal jurisdiction, the Senate did not act on the bill. There are two sides to the diversity issue, however. A number of lawyers do not want the diversity jurisdiction changed, arguing that a state court may be biased in favor of citizens of its own state. In addition, particularly strong arguments arise with regard to civil liberties cases, because a local jury may be biased against persons living outside of their county or state.

**Simplification of Court Procedures.** Another measure to reduce the burden on the federal courts is simplification of procedures for the adjudication of civil disputes. In many cases, complex rules that may be appropriate for elaborate controversies between government and corporations are applied to more routine controversies involving ordinary citizens. Such complexity increases the waiting time for trials, the length of adjudication, and the costs of litigation to the detriment of the ordinary person of modest means. Many judges and lawyers are now seeking to simplify procedures for the more ordinary cases of civil litigation. According to two officials of the American Bar Association’s Action Commission to Reduce Court Costs and Delay: “There is a suprising unanimity among judges, lawyers, and the public that the judicial system as a whole



---

and lawyers, in particular, not only take too much time but are pricing themselves out of the market.’’<sup>3</sup>

Experiments with different measures that are likely to yield simpler and more timely trials in ordinary civil litigation need to be conducted. In particular, limits need to be set on the form and length of pretrial discovery procedures—the court-sanctioned procedures whereby contending parties challenge one another to provide additional information about a case so that litigants can better prepare for the actual trial. These pretrial processes are often long, expensive, and require the preparation of documents that are not needed for trial. Therefore, such procedural simplification might provide much needed reductions in the time and costs of litigation.

During the 1970s, a great deal of interest developed in arbitration, mediation, and other such modes of dispute resolution that are alternatives to the adversary process of court trials. “Arbitration” indicates the reference of a dispute to a third party for a binding decision, while “mediation” refers to the activity of a third party to facilitate an agreement between the contending parties. Mediation does not involve the stipulation of a settlement by a third party; instead the mediator engages in a variety of activities that are designed to bring about an agreement between the contending parties—suggesting possible settlements, communicating messages between disputants, arranging the format for negotiations, and so forth.

Interest in such modes of dispute resolution has increased largely because of the overburdening of the courts. However, another major reason exists—the belief that in some cases, the adversary trial process may increase the conflict between disputants and may lessen the chances of arriving at the best solution to a dispute. Because trial procedures are usually directed at assigning fault and determining a winner and a loser, disputants typically take extreme positions about the merits of their respective cases and the weakness of their opponent’s arguments. Information is presented according to formal procedures that may obscure an understanding of the nonlegal aspects of the issues.

Alternative modes of dispute resolution have been applied to at least five types of situations, although they cannot be applied to all types of disputes within each category: (1) minor disputes among neighbors, (2) minor assault, fraud, and other lesser criminal offenses, especially among family and friends; (3) lesser civil disputes, particularly those involving the administration of government programs; (4) disputes involving the protection of the environment; and (5) as part of the process of litigation at the suggestion of the court.

## **Alternative Modes of Dispute Resolution**

---

**Minor Disputes Among Neighbors.** Since the initiation of an experimental program in Philadelphia, Pa., in 1971, approximately 100 community dispute centers have been created across the United States to mediate or arbitrate interpersonal disputes. In all programs, impartial third parties, generally volunteers, assist disputants to reach mutually satisfactory resolutions. All of these programs use mediation; a few also use arbitration (in which the third party is empowered to impose a solution if the disputants are unable to reach agreement).

The visibility of community dispute centers was increased in 1976 when the federal government established Neighborhood Justice Centers in Atlanta, Ga., Kansas City, Mo., and Los Angeles, Calif. Evaluations of these and other experimental centers indicate that they have attracted significant caseloads and produced greater satisfaction among disputants (with both the outcome of the process and the process itself) than municipal courts. On the other hand, some preliminary information also indicates that the costs per case in neighborhood dispute centers are greater—at least until their case volume approaches that of small claims courts or municipal courts. In addition, the possibility remains that some decisions might not always be handled best in neighborhood dispute centers.

**Lesser Criminal Offenses.** A category of disputes that frequently do not go to trial is the minor criminal offense—relatively minor assaults, thefts, and fraud involving small sums of money—among family and friends. Criminal cases involving parties with ongoing personal relationships account for approximately half of the cases currently before criminal courts (although, of course, most such cases are filed in state and local courts). These cases are dismissed far more frequently than those arising between strangers, whether because of real or expected lack of cooperation by complainants or because of prosecutors' belief that such disputes are inappropriately dealt with in the criminal court process. This category of offenses may provide a particularly fruitful area for mediation, arbitration, and use of neighborhood dispute centers.

**Lesser Civil Disputes.** In addition to experiments with neighborhood dispute centers, a variety of experiments have been conducted concerning alternatives for resolving civil disputes outside the courts. For example, a growing cadre of trained mediators (located across the nation) is resolving multiparty conflicts over such diverse subjects as access to a limited number of publicly funded housing units by members of competing ethnic groups or Indian claims to land and fishing rights. Other programs include the initiation of institutional grievance procedures for



---

resolving the complaints of prisoners, employees, and students, and the sponsorship of arbitration by business associations for their response to consumer complaints.

**Environmental Mediation.** Recently, interest has grown among corporations, environmentalist groups, government agencies, and foundations in encouraging mediation of disputes about the environmental effects of new construction, mining, and other developmental activities. Such mediation is usually undertaken at the local level in relation to a particular developmental project. Perhaps the best known case was the mediated agreement reached among environmentalists, local governments, and federal agencies to establish a flood control project in the Snoqualmie-Snohomish River basin in the State of Washington.

**Alternative Modes of Dispute Resolution Linked to Court Procedures.** In 1978, three federal district courts in Connecticut, eastern Pennsylvania, and northern California began referring some civil disputes to arbitrators. Initial information about this program indicates that arbitration referral tended to speed the resolution of disputes in comparison to the trial procedure.

Because most cases filed in federal court are eventually settled outside the court, the speedier schedule of the arbitration procedure also encourages earlier out-of-court settlements. Perhaps three-fourths of the cases referred to arbitration are settled at the pre-arbitration stage. However, a problem has emerged with the procedure—about half of the remaining cases go to court because one of the litigants refuses to accept the settlement of the arbitrator. Therefore, preliminary information indicates that although court referral to arbitration may speed the settlement of disputes, it probably does not reduce the number of cases going to trial—at least at the level of the federal courts.

In 1979, the Carter Administration drafted legislation to encourage the use of arbitration in federal district courts. President Carter stated: “[T]he arbitration proposal would provide an innovative means for resolving speedily, fairly, and at reduced cost certain types of civil cases in which the main dispute is over the amount of money that one person owes another.”<sup>4</sup> The proposal specifically excluded cases that involve allegations of civil rights violations, of infractions of Constitutional law, or of fraud against the government.

The American Bar Association’s Action Commission to Reduce Court Costs and Delay is currently studying experimentation with new court procedures to stimulate pretrial settlements of civil disputes (which might be reached through mediation or other nontrial processes). One experimental procedure is for the court to mandate an exchange of settlement offers through the mediation process at the pretrial stage.

---

Another area of experimentation is nonjudicial adjudication. Retired judges and lawyers on occasion can act as adjudicators in the place of a judge. The adjudicator would rely on the traditional framework of procedure and substantive law, but nevertheless could simplify the procedures by setting time limits or relaxing the most strict rules for admission of evidence.

In February 1980, the Congress passed the Dispute Resolution Act, which would establish a program of grants for the states to develop alternative methods of resolving disputes. The act would also establish an office in the Department of Justice to serve as a research center for alternative dispute resolution procedures. However, by October 1980 Congress had not appropriated funds for these programs, and thus the degree of Congressional commitment to the program is not clear. Local programs for dispute resolution continue to proliferate, however.

**Accordingly, as a partial measure to obtain justice for the average person at less cost and with fewer delays, the Panel recommends that a high priority be given to experiments with modes of dispute resolution that serve as alternatives to formal litigation. Such alternative modes include arbitration, mediation, and negotiation between the parties to the dispute.**

Actions that the federal government might take include training arbitrators and mediators and providing full funding for the research effort of the Dispute Resolution Act of 1980. In particular, possible roles for federal agencies in alternative modes of dispute resolution should be investigated. For instance, agencies involved in environmental disputes (the Environmental Protection Agency), in the regulation of the use of chemicals (the Food and Drug Administration), in massive construction projects (the Departments of Defense and Energy) might better achieve some of their goals if they sought to participate actively in alternative processes of dispute resolution.

Private agencies have already played an important role in the development of alternative modes of dispute resolution. Small businesses in California and Colorado now specialize in the mediation of environmental disputes. The arrangement of divorce settlements by private mediators is developing. The American Arbitration Association (a private, nonprofit organization) specializes in dispute resolution. The National Coal Policy Project represents an innovative effort by foundations, environmentalists, and energy companies to resolve disputes concerning the development of new mines and of coal-burning power plants.



---

Some companies have introduced innovative methods of structured consultations with community leaders in negotiations about the siting of new chemical plants. Such alternative modes of dispute resolution in the private sector should be encouraged and expanded.

1. Robert W. Kastenmeier and Michael J. Remington, "Court Reform and Access to Justice: A Legislative Perspective," *Harvard Journal on Legislation*, 16 (1979):302-303.
2. Warren E. Burger, "Annual Report on the State of the Judiciary," *American Bar Association Journal*, 66 (March 1980):297.
3. Seth Hufstedler and Paul Nejelski, "A.B.A. Action Commission Challenges Litigation Cost and Delay," *American Bar Association Journal*, 66 (August 1980):966.
4. Message of President Jimmy Carter to the Congress of the United States, *Congressional Record*, 125 (Feb. 27, 1979):H911.

## References

- Action Commission to Reduce Court Costs and Delay, "Case Management and Simplified Procedures: An Economical Litigation Program for Smaller Civil Litigation," Washington, D.C.: American Bar Association, August 1980.
- Austern, David, et al. "Criminal Justice," paper prepared for the President's Commission for a National Agenda for the Eighties, Washington, D.C., 1980.
- Cook, Royer F.; Roehl, Janice A.; and Shepphard, David I. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. U.S. Department of Justice, National Institute of Justice, Office of Program Evaluation. Washington, D.C.: U.S. Government Printing Office, 1980.
- Hufstedler, Seth and Nejelski, Paul. "A.B.A. Action Commission Challenges Litigation Cost and Delay," *American Bar Association Journal*, 66 (August 1980), pp. 965-969.
- Kastenmeier, Robert W. and Remington, Michael J. "Court Reform and Access to Justice: A Legislative Perspective," *Harvard Journal on Legislation*, 16 (1979), pp. 301-342.
- Meador, Daniel J. "The Federal Judiciary—Inflation, Malfunction, and a Proposed Course of Action," in *Conference on the Federal Courts: 1980*. W. S. Moore, ed. Washington, D.C.: The American Enterprise Institute, forthcoming.
- Reports of the Proceedings of the Judicial Conference of the United States Held in Washington, D.C., March 7-9, 1979 and September 19-20, 1979: Annual Report of the Director of the Administrative Office of the United States Courts, 1979*. Washington, D.C.: U.S. Government Printing Office, 1979.
- Schuck, Peter H. "Litigation, Bargaining, and Regulation," *Regulation*, 3 (July-August 1979), pp. 26-34.
- Where We Agree: Report of the National Coal Policy Project: Summary and Synthesis*. Washington, D.C.: Center for Strategic and International Studies, Georgetown University, 1978.



---

# Biographies

*John W. Gardner* is the Founding Chairman of Common Cause. Mr. Gardner was educated at Stanford University and received his Ph.D. in psychology from the University of California. He has served as Chairman of the National Urban Coalition, is a former Secretary of Health, Education, and Welfare in the Johnson Administration, and is a past President of the Carnegie Corporation of New York and the Carnegie Foundation for the Advancement of Teaching. He was a member of President John F. Kennedy's Task Force on Education and Chairman of the Commission on International Education and Cultural Affairs. Mr. Gardner was awarded the Presidential Medal of Freedom in 1964 and is the author of several books.

**John W.  
Gardner**

*Ruth J. Hinerfeld* is President of the League of Women Voters. Before her election as President in 1978, Ms. Hinerfeld served as the League's first Vice President of Legislative Activities, as Chairperson of the League's International Relations Committee, and as the League's United Nations Observer. Ms. Hinerfeld is a graduate of Vassar College and the Harvard-Radcliffe Program in Business Administration. She was appointed by Presidents Gerald R. Ford and Jimmy Carter to serve on the White House Advisory Committee for Trade Negotiations. In addition, Ms. Hinerfeld has served as Secretary of the United Nations Association of the United States of America and as a member of the U.S. delegation to the World Conference on the U.N. Decade for Women. She is also a member of the Overseas Development Council, the Leadership Conference on Civil Rights, and the National Petroleum Council.

**Ruth J.  
Hinerfeld**

*Thomas C. Jorling* is Professor of Environmental Studies and Director of the Center for Environmental Studies at Williams College. Mr. Jorling was educated at Notre Dame University and received his M.S. in ecology from Washington State University and the LL.B. from Boston College. He has served in the Solicitor's Office, Fish and Wildlife Division, Department of the Interior; as Minority

**Thomas C.  
Jorling**

---

Counsel for the Senate Committee for Public Works; and also was Assistant Administrator of the Office of Water and Waste Management of the Environmental Protection Agency, which was responsible for programs that implemented the Clean Water Act, the Safe Drinking Water Act, the Ocean Dumping Act, and the Resources Conservation and Recovery Act.

*Rhoda H. Karpatkin* is Executive Director of Consumers Union, a nonprofit product-testing and consumer advisory organization, which publishes *Consumer Reports*. She is a graduate of Brooklyn College and Yale Law School. Before joining Consumers Union in 1974, Ms. Karpatkin was its legal counsel for 16 years. She is the former chairperson of the Special Committee on Consumer Affairs of the Association of the Bar of the City of New York, and is a member of the Administrative Conference of the United States, and of the American Bar Association's Action Commission on Law and the Economy and the Action Commission to Reduce Court Costs and Delay.

**Rhoda H.  
Karpatkin**

*Theodore R. Marmor* is Professor of Political Science and of Public Health and Chairman of the Center for Health Studies at Yale University. Dr. Marmor received his A.B. and Ph.D. degrees from Harvard University. Previously he has taught at the Universities of Chicago, Minnesota, Wisconsin, and Essex in England. He is the author of *The Politics of Medicare* (1970), co-author of *National Health Insurance: Conflicting Goals and Policy Choices* (1980), and has written numerous articles on the policies of the welfare state, emphasizing social security, national health insurance, and health planning. Dr. Marmor is a member of the Council on Foreign Relations, has served as Special Assistant to the Under Secretary of the Department of Health, Education, and Welfare, and was on the staff of the President's Commission on Income Maintenance Programs.

**Theodore R.  
Marmor**

*Frank Pace, Jr.*, is President and Chief Executive Officer of the International Executive Service Corps and also Chairman and Chief Executive Officer of the National Executive Service Corps. Mr. Pace is a graduate of Princeton University and received his LL.B. from the Harvard University Law School. Previously, he was the Director of the U.S. Bureau of the Budget, the Secretary of the Army under President Harry S. Truman, the President and Chairman of the Board of General Dynamics Corporation, and a past Chairman of the Board of the Corporation for Public Broadcasting. Mr. Pace served as Vice Chairman of the President's Commission on National Goals, formed by President Dwight D. Eisenhower to outline national objectives for the 1960s.

**Frank Pace, Jr.**



---

*Paul G. Rogers* is a former member of the U.S. House of Representatives, where he represented the West Palm Beach, Fla., area for 24 years. Mr. Rogers served 8 years as Chairman of the House Subcommittee on Health and the Environment. He was instrumental in gaining the passage of major health legislation including the National Cancer Act, the National Health Planning and Resources Development Act, the Emergency Medical Services Act, the Health Maintenance Organization Act, the Safe Drinking Water Act, and the Radiation Health Safety Act. Mr. Rogers was the House author of the Clean Air Act of 1970 and its amendments of 1974 and 1976. Mr. Rogers received his LL.B. from the University of Florida Law School and is currently a partner in the law firm of Hogan & Hartson, Washington, D.C.

**Paul G. Rogers**

*Howard J. Samuels* is a former Under Secretary of Commerce. After graduating from the Massachusetts Institute of Technology, Mr. Samuels founded the Kordite Corporation, a manufacturer of plastic products. He was the first Chief Executive of the Off Track Betting Corporation in New York. At present, he is a consultant in the field of productivity and serves as Chairman of Cities in Schools, a national nonprofit organization on urban education, of the Israel Bond program for the State of New York, and of the Task Force for the 1980 Small Business Conference.

**Howard J.  
Samuels**

---

*Caroline M. LeGette* is a member of the Senior Professional Staff for the Panel on the Electoral and Democratic Process. Dr. LeGette was educated at George Washington University and received her M.A. and Ph.D. in political science from the State University of New York at Buffalo, where she was awarded a University Fellowship and several departmental assistantships. She has been an Assistant Professor of Political Science at Northern Illinois University and was awarded a faculty research grant. Dr. LeGette has conducted research on public opinion, the Congress, and the Presidency.

**Caroline M.  
LeGette**

*Andrew S. McFarland* is a member of the Senior Professional Staff of the Panel on the Electoral and Democratic Process. Dr. McFarland received his Ph.D. in political science from the University of California at Berkeley. He has taught political science at Berkeley and at the University of Chicago. Dr. McFarland is currently a Visiting Professor of Political Science, University of California at Los Angeles. He has published *Power and Leadership in Pluralist Systems* and *Public Interest Lobbies: Decision Making on Energy*, and is currently writing a book about Common Cause, the political reform lobby.

**Andrew S.  
McFarland**





---

## COMMISSION STAFF

### Administration

Stephen F. Durbin  
Director of Administration

Loretta J. Marshall  
Administrative Officer

Debra E. Brown  
Administrative Assistant

Debra K. Amick  
Ronald J. Benschoter  
Jacquelin L. Freeman  
Vondell A. Henson  
Diane W. Knight

Dennis B. Melby  
Lourie A. Russell-Kawecki  
Romaine A. Sharp  
Leesa N. Weiss  
Tammy L. White

### Public Affairs

Daniel F. Dwyer  
Special Assistant for Public Affairs

Thomas W. Kell  
Tamara S. Rafferty

### Panel Professionals

Edward D. Berkowitz  
Paul M. Bunge  
Charles R. Corrigan  
Steven L. Englund  
Christopher H. Foreman  
Lisa E. Goldberg  
Robert D. Hamrin  
Jeffrey A. Hart  
Donald A. Hicks

William L. Jordan  
Caroline M. LeGette  
Keith Melville  
Andrew S. McFarland  
Donald J. O'Hara  
Gail M. Pesyna  
Dennis C. Pirages  
Raymond F. Reisler  
Stuart O. Schweitzer

### Production

*Editorial Adviser*  
Joseph Foote  
Bonnie J. Brown (Assistant)

*Editors*  
Mary E. Cadette  
Judith Ross Ferguson  
Nina M. Graybill  
Whitney Watriss

*Designer*  
Morgan-Burchette Associates, Inc.

*Proofreader*  
Editorial Experts, Inc.

*Composition*  
TechnoGraphics, Inc.

electoraldemocra00unit

electoraldemocra00unit



electoraldemocra00unit

**WITHDRAWN**

No

he

but

ary.

Sale of this material benefited the Library





3 9999 00150 870 2

PRESIDENTS COMMISSION  
FOR A NATIONAL

# Agenda FOR THE Eighties

Chairman

William J. McGill

Daniel Bell

Robert S. Benson

Charles E. Bishop

Gwendolyn Brooks

J. Fred Bucy, Jr.

Pastora San Juan Cafferty

Joan Ganz Cooney

M

Juanita M. Kreps

Esther Landa

Theodore R. Marmor

Martin E. Marty

Michael McCloskey

William E. Miller

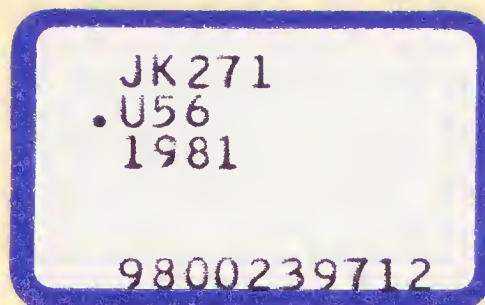
Alan B. Morrison

— — — — —

**Boston Public Library**

Copley Square

GENERAL LIBRARY



The Date Due Card in the pocket indicates the date on or before which this book should be returned to the Library. Please do not remove cards from this pocket.



---

REPORTS OF THE  
PRESIDENT'S COMMISSION  
FOR A NATIONAL

# Agenda FOR THE Eighties

---

A National Agenda for the Eighties

Energy, Natural Resources, and the Environment

The American Economy: Employment, Productivity, and Inflation

Science and Technology: Promises and Dangers

Government and the Advancement of Social Justice: Health, Welfare, Education, and  
Civil Rights

Urban America in the Eighties: Perspectives and Prospects

Government and the Regulation of Corporate and Individual Decisions

The Electoral and Democratic Process

The Quality of American Life

The United States and the World Community

---